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Maintenance Claims in respect of Settled Land

THE decision of WYNN PARRY, J., in *Re Pelly's Will Trusts* [1956] 1 Ch. 81 aroused a good deal of anxiety at the time when it was first reported. A tenant for life of settled land had exercised his rights under s. 75 (2) of the Settled Land Act, 1925, to direct the trustees of the settlement to apply capital money in recouping the tenant for life costs incurred by him of improvements to the settled land. Subsequently, the tenant for life obtained a repayment of tax in respect of this expenditure. It had previously been a fairly general practice to regard repayments of tax made in these circumstances as belonging absolutely to the tenant for life, but Wynn Parry, J., held that the tenant for life was accountable for the tax recovered to the trustees. Judging by the correspondence received by us, this case was of exceptional interest, and there should be corresponding relief felt now that the Court of Appeal has reversed the decision below (see [1956] 3 W.L.R. 26; and p. 379, *post*). The decision will obviously receive close attention from those concerned with the administration of settlements, but two preliminary comments suggest themselves on a first reading of the full report. First, it is still not clear under what section of the Income Tax Act, 1952, the allowance to the tenant for life in this case was made, but it does seem that nothing turned on the particular provisions of this Act. Secondly, it is now quite clear that the position where trustees have paid the costs of improvements in the first place may be radically different from the position where the tenant for life made the payment himself. That was one of the points raised in the discussion which followed the report of the decision at first instance in this case.

Solicitors and Trade Unions

AN opinion of the Council of The Law Society is given in the current issue of the *Law Society's Gazette* in regard to the relation between solicitors and the trade unions for whose members they may act. A case was brought to the Council's attention in which solicitors acted for a member of a trade union, who was not entitled to assistance under the union's recognised scheme, on the recommendation of the union. The union subsequently announced a settlement of the action, in which the solicitors were named in a local newspaper, a fact which the Council regarded as objectionable. The Council give their opinion that solicitors ought not to permit trade unions, or other similar associations, to recommend

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them to their members where the member is not entitled to assistance, unless the member has asked for a recommendation and steps are taken to ensure that he has a complete freedom of choice of solicitor. In such cases, solicitors should obtain a written statement from the member that he has no solicitor whom he wishes to consult, and that he desires, of his own free will, to consult them. Solicitors acting contrary to this view, the Council state, may well be permitting touting, advertising or the attraction of business to them unfairly in breach of r. 1 of the Solicitors' Practice Rules, 1936. The *Gazette* refers readers to an article in its issue for May, 1953, which gives the terms of the general waiver granted to union solicitors to act for members in contentious matters.

The Solicitors (Amendment) Bill

ONE amendment only was made by the House of Commons during the Committee stage of the Solicitors (Amendment) Bill on 11th May. This was to cl. 8, dealing with proceedings before the Disciplinary Committee. The clause provided that the quorum of the Disciplinary Committee or a division thereof should be three, but went on to qualify this by a proviso that "unless any of the parties thereto objects, an application or complaint may be heard and determined by only two members of the committee or division." This proviso the House deleted without a division after criticism by Mr. ERIC FLETCHER and Mr. G. R. MITCHISON. The Committee stage was followed immediately by the Third Reading debate, in which Sir LANCELOT JOYNSON-HICKS expressed the gratitude of the profession to the LORD CHANCELLOR, the MASTER OF THE ROLLS and LORD COHEN for their part in commending the Bill to the House of Lords and, referring to the clause increasing the annual contribution to the Compensation Fund, said that the primary object of the Bill was to maintain the honour of the profession and to enhance the confidence which it holds in the esteem of the public. The Bill received an unopposed Third Reading and, subject to the Lords' approval of the Commons' amendment, now awaits the Royal Assent.

"Or Any Part Thereof"

ALTHOUGH the members of the Court of Appeal who found themselves in a majority in *Esdaile* v. *Lewis* (*The Times*, 3rd May) professed to be bound by authority to construe a condition in a manner contrary to their inclinations, it may be respectfully questioned whether their decision does not break at least a few inches of new ground. True it has been an accepted, if somewhat arbitrary, rule of construction for nearly a century and a half that a covenant not to underlet "the premises" is not broken by sub-letting only a part of them (*Church* v. *Brown* (1808), 15 Vesey 258, 265). True, also, that in *Cook* v. *Shoesmith* [1951] 1 K.B. 752 the sentence "I further agree not to sub-let" was held to require the same accepted construction. That was because the verb "to sub-let" must have an object, and the object most naturally to be inferred was "the premises"; by means of which implicit interpolation the long-understood rule was spelled out exactly. The words in question in the recent case were terser still: "No sub-letting allowed without the written consent of the landlord." Here the need to inquire what it was the sub-letting of which was prohibited was not grammatical but solely interpretative, and counsel's analogy with the general prohibition in a "no parking" or "no smoking" notice might be thought apt. One puff at a cigarette is surely enough to constitute an infringement. Nevertheless, though DANCKWERTS, J., would have allowed the landlord's appeal on the ground that a condition so framed prevented a sub-letting of part of the premises let, JENKINS and HODSON, L.JJ., held that it was not for the courts to whittle down a principle which for better or worse had become established by long authority. The case illustrates once more the wisdom of sticking to the wording of established precedents.

Rule in Rylands *v.* Fletcher

IT is interesting to note that, on the 8th May, in *Balfour* v *Barty-King and Another* (*The Times*, 9th May) Mr. Justice HAVERS held that the use of a blowlamp to thaw out pipes with dry lagging round them in an attic the roof of which contained quantities of dry straw was dangerous and non-natural and rendered the occupiers of the house liable under the *Rylands* v. *Fletcher* rule (1868), L.R. 3 H.L. 330. The April issue of the *Law Quarterly Review* contains a criticism of another recent case on the same rule, *Perry* v. *Kendricks Transport, Ltd.* [1956] 1 W.L.R. 85; *ante*, p. 52, in which the Court of Appeal held that a motor coach with petrol or inflammable petrol vapour in its tank was within the rule. Whatever might have been the case in 1919 (as to which see *Musgrove* v. *Pandelis* [1919] 2 K.B. 43, 47), said the writer, the effect of such a decision to-day is to bring five million vehicles in Great Britain within the rule, thus defeating the original object of the rule, which was based on the conception that he who creates an extraordinary risk for his own purposes ought to be held absolutely liable if the dangerous thing escapes. In the case of the blowlamp, it appears that the risk can be minimised with reasonable care, but where the risk, as in *Perry* v. *Kendricks Transport, Ltd.*, occurs on a parking place, nothing can be done to avoid it. The only precaution that car owners can take with regard to the risk appears to be to insure against it.

The Disciplinary Committee

INCLUDED in the wide scope of the Administrative Law Reports in the current issue of the *British Journal of Administrative Law* are two before The Law Society's Disciplinary Committee and an appeal to the Divisional Court against a decision of the Disciplinary Committee. The first two cannot be regarded as law reports in the recognised sense, and seem to be included merely because they are decisions of a well known domestic tribunal. The third was *In re a Solicitor* (*The Times*, 22nd and 27th October, 1955), in which a solicitor, convicted at the Central Criminal Court of inducing persons by deceptive statements to purchase shares, was found guilty of conduct unbecoming to a solicitor and was struck off the Roll. He appealed to the Divisional Court on the ground that the decision of the Central Criminal Court, and that of the Court of Criminal Appeal, to which he later appealed, were contrary to justice and law, and that he was innocent. The Divisional Court held that they could not go behind the convictions, which were valid convictions, upheld by the Court of Criminal Appeal. The *Journal* emphasises, in its comment, that "the territory available for examination" by the Commission appointed in November, 1955, under the chairmanship of Sir OLIVER FRANKS is very large. It clearly, however, does not include the Disciplinary Committee, which

is not constituted "by a Minister of the Crown or for the purposes of the Minister's function." Nor, it seems, does the private tribunal come naturally within the scope of a journal dealing with administrative law, although the disciplinary action taken by professional bodies against their members is rightly a matter of public interest deserving of report.

Interest on Bankers' Drafts

AN important reminder is given to solicitors in the current issue of the *Law Society's Gazette* that, in the absence of special arrangements made for clearance, bankers' drafts may take three or four days to clear. This depends partly upon whether the bank upon which the draft is drawn is in the same locality as the collecting bank, and upon whether there is a local clearing house. Where the draft is for a large sum (e.g., proceeds of sale of valuable property) and the draft is paid into a deposit account, an appreciable amount of deposit interest may thus be lost, it is stated, because the deposit account will not normally be credited with interest in respect of any period prior to the clearance of the draft.

Getting the Date Right

IT is certainly no novel idea that dates may be important in legal matters. Watching time limits is an essential part of legal practice. Remembering the precise chronology of events is just what one's witnesses seem to find most difficult. Even a document, so faithful a reflection, often, of transactions and intentions, loses some of its effectiveness unless it can be accurately placed in the scheme of time. And in certain cases it is vital that the document itself should get its dates right. Thus the Court of Appeal have just held that a notice of the assignment of a debt which misrecited the date of the indenture of assignment did not, for that reason, comply with s. 136 (1) of the Law of Property Act, 1925, and so was ineffective to complete the assignee's title to sue for the debt in law (*W. F. Harrison & Co., Ltd.* v. *Burke* [1956] 1 W.L.R. 419; *ante*, p. 300).

Buying a House

THE National Council of Social Service has just published a pamphlet costing 1s. entitled "Buying a House, Do's and Dont's." This is not the only pamphlet which is intended to protect the intending purchasers of houses from some of the pitfalls which lie in their path, but it is certainly one of the best. In particular, and making all allowances for our prejudice, we like the insistence that professional advice should be sought at an early stage. The pamphlet contains a very great amount of sound sense and the only difficulty will be to ensure that it gets into the hands of those for whom it is intended very early. The arrival of intending purchasers in solicitors' waiting rooms is sometimes too late, but no harm would be done if solicitors bought a supply of the pamphlet in order to distribute to clients who have not committed themselves. It can be obtained from the Head Office of the Council at 26 Bedford Square, London, W.C.1.

Law and Public Policy

IN recent weeks we have published articles on the Restrictive Trade Practices Bill. Much public controversy turns on whether the judicial process in general is subjective or objective, a matter upon which there is some difference of judicial opinion: this difference will be emphasised by the new Bill. Professor J. L. MONTROSE in a letter to *The Times* demonstrates that the formulation and declaration of public policy by the courts is not a new departure. He cites the treatment by the common law of unreasonable restraints of trade and the judgment of Lord Atkin in *Fender* v. *Mildmay*. When the Restrictive Trade Practices Bill was first introduced we welcomed the fact that the body designated to make decisions would be judicial rather than administrative. The debates in the House of Commons and the controversies and arguments elsewhere have not led us to change that opinion.

Jury Service

THE Association of Municipal Corporations intends to ask the Home Secretary to remove the property qualification for jury service. It also proposes that five classes of persons should be removed from the list of those entitled to claim exemption from the service. They are officers and men of the Territorial Army and Auxiliary Air Force (except when undergoing annual training), the master, warden and brethren of the Corporation of Trinity House of Deptford Strond, members of Mersey Docks and Harbour Board and the Port of London Authority, all persons concerned in carrying on the business of the Post Office and inspectors of factories.

Mental Health

THE May, 1956, issue of the *Twentieth Century*, which costs only 2s., is entirely devoted to the subject of mental health. For lawyers the most interesting contributions are those called "Inside," by CECILY MACKWORTH, and "Reform or Punishment," by D. A. SINGTON. Some of those who enter solicitors' offices require the services of a psychiatrist more than a lawyer, but not all solicitors are able to recognise the symptoms. There is still an unfortunate tendency to treat mental illness lightly. Those who would readily help a blind or crippled man to the door and into a taxi are apt to lose their tempers with those whose minds are injured. This number of the *Twentieth Century* can do much to correct this tendency, as also can an exhibition organised by the Ministries of Health and Labour which is touring the country to inform the public about the existence and treatment of mental illness, and which everyone should visit.

Staunch Symbol

IF anyone feared that an era of reckless spending was about to open in the county courts he will have been reassured by the news from Scarborough, where Mr. GONG, a laundryman who wished to take the Chinese oath, was warned to provide his own saucer. Foreigners who impudently fall ill in our irreproachable climate may get away with it under the National Health Service, but breakages in furtherance of an alien ritual we will not subsidise. No breakage occurred, however, as it turned out, for the saucer produced by Mr. Gong was so stout that although he "hammered it against the witness stand and on the floor" he only succeeded in cracking it. It must have been a splendid scene. Typical British compromise was not lacking in face of this typical British saucer, and Mr. Gong was allowed to take the oath by saying: "I will tell the truth. If not my soul will be *cracked* like this saucer," after which he won his case. One is glad to picture him at the end of it all, possibly a little shaken but with soul uncracked, admiring both our justice and our crockery.

RES IPSA LOQUITUR—II

In an earlier article, we have considered the origin and the scope of the maxim *res ipsa loquitur;* it is now proposed to consider, in the light of the Court of Appeal's recent decision in *Moore* v. *R. Fox & Sons* [1956] 2 W.L.R. 342; *ante*, p. 90, some of the problems which arise in seeking to apply the maxim—and, in particular, the vexed question of how far a defendant need go to discharge the onus which the maxim is said to lay upon him.

It will be remembered that the conflict between the two views of this problem can be summarised by posing a rhetorical question: must the defendant *prove* the accident occurred without his negligence, or need he only give *a reasonable explanation* of how it *could* have happened without his negligence? The first view elevates the maxim to a status which is close to that of a presumption of law, while the second regards it as no more than a rule of evidence affecting onus.

An early example of the first view is to be found in the case of *Angus* v. *London, Tilbury and Southend Railway* (1906), 22 T.L.R. 222, where a train pulled up suddenly to avoid running over a passenger who was crossing the line. The stoppage caused injury to a passenger in the train. In dismissing an application by the defendants for a new trial, Lord Loreburn said in the Court of Appeal: "The defendants had to prove they were blameless in respect of the cause of the accident."

The second view is clearly expressed in Lord Dunedin's dissenting speech in the House of Lords in *Ballard* v. *North British Railway Co.* [1923] S.C. (H.L.) 43: "If the defenders can show a way in which the accident may have occurred without negligence, the cogency of the fact of the accident by itself disappears, and the pursuer is left as he began, namely, that he has to show negligence. I need scarcely add that the suggestion of how the accident occurred must be a reasonable suggestion." This view was adopted by Langton, J., in *The Kite* [1933] P. 154, at p. 168, where he suggested that an explanation which was sufficient to rebut the maxim might "leave an equal possibility that [the accident] happened without negligence as with negligence." It was upon this passage that the trial judge, Streatfeild, J., founded himself in the case under review, and it was at that point that the Court of Appeal took a different view of the matter.

The pragmatic approach

Two of the later cases appear to perpetuate the conflict between the two views without resolving it. In *Woods* v. *Duncan* [1946] A.C. 401 (the action which arose out of the sinking of the submarine *Thetis* while on her trials and in which Lieut. Woods was only one of the defendants), three members of the House of Lords proceeded on the assumption that the maxim did apply. It is respectfully submitted that it was, in fact, a case in which it was plainly unhelpful to invoke the maxim, for it was surely a misleading over-simplification to regard the submarine, which still had some of its maker's servants on board, as being "under the management of" Lieut. Woods, who was but one of the ship's officers.

However that may be, Viscount Simon and Lords Russell and Simonds appear to agree that the maxim only shifts the burden of proof by raising a *prima facie* case and thereby throwing on the defendant the task of proving that he was not negligent, but this does not mean that he must show how and why the accident happened. A passage from Lord Simonds' speech appears at first sight to throw upon the defendant the hard task of proving that he was not negligent. Of course, it is clear in any case that, if the defendant proves affirmatively that he was not negligent, the plaintiff must fail: but Lord Simonds surely did not go nearly so far when he said that a court would be more satisfied of a defendant's innocence "if a *plausible* explanation which attributes the accident to some other cause is put forward, but this is only a *factor in the consideration of probabilities.* The accident may remain inexplicable, or at least no satisfactory explanation other than his negligence may be offered; yet if the court is *satisfied by his evidence* that he was not negligent, the plaintiff's case must fail." The phrases in italics suggest that, when evidence is adduced, it is taken into consideration with the evidence of negligence in deciding whether on the whole the balance of probability is in favour of the plaintiff or the defendant.

In fact, it is significant that in this case the rebuttal of the maxim was treated quite practically as a matter of inference and of credibility—with very little difference from any other question of fact, except for an acknowledgment of the *prima facie* presumption which was raised. No doubt in this context one of the features which was rightly regarded as important was the exclusiveness or otherwise of the defendant's control of the operation with which the court was concerned. The fact that so many other people were quite possibly in control of some parts of the operation and equally possibly at fault made it easier for the court to accept Lieut. Woods' evidence to the effect that he had not been negligent.

The same pragmatic approach can be seen working in an opposite direction in *Grant* v. *Australian Knitting Mills* [1936] A.C. 85. In that case the plaintiff contracted dermatitis from an excess of sulphides in a pair of woollen underpants; it was conceded that these must have been present when the garment left the manufacturers—so that the control and responsibility were entirely in their hands. They called evidence to show that their process was designed to guard against leaving irritant chemicals in the finished article. The Judicial Committee quite readily inferred that someone on the defendants' behalf had been at fault (*a*) because the control was admittedly theirs, and (*b*) because a material witness was not called. To have invoked the maxim in this case, although it was apparently in point, could only have confused the issue.

Support for the presumption theory

The maxim appeared in perhaps its most dogmatic form in the judgment of Asquith, L.J., in the Court of Appeal in *Barkway* v. *South Wales Transport Co., Ltd.* [1948] 2 All E.R. 460, at p. 471: "(i) If the defendants' omnibus leaves the road and falls down an embankment, and this without more is proved, then *res ipsa loquitur* . . . and the plaintiff succeeds unless the defendants can rebut this presumption. (ii) It is no rebuttal for the defendants to show, again without more, that the immediate cause of the omnibus leaving the road is a tyre-burst, since a tyre-burst *per se* is a neutral event consistent, and equally consistent, with negligence or due diligence on the part of the defendants. When a balance has been tilted one way, you cannot redress it by adding an equal weight to each scale. The depressed scale will remain down . . . (iii) To displace the presumption, the defendants must go further and prove (or it must emerge from the evidence as a whole) either (*a*) that the burst was due to a specific cause

which does not connote negligence on their part but points to its absence as more probable, or (*b*) if they can point to no such specific cause, that they used all reasonable care in and about the management of their tyres."

This *dictum*, which goes a long way towards "the presumption of law theory," was much relied upon by Lord Evershed in the case with which we are concerned. With all respect, it may be suggested that Asquith, L.J.'s discussion of the effect of proving a "neutral event" is diverting but unhelpful; if the defendants can point to a reasonably probable cause of the accident which is consistent with no negligence on their part, then surely they have redressed the balance of the scale by adding a weight which is equal to the presumption? If they do less than that, either by pointing to a merely possible cause or by pointing to "a neutral event"—one which is merely equivocal and provides in reality no explanation—then they must fail to redress the balance. Surely the reason why the proof of a tyre-burst avails them so little is that such an explanation in itself raises a presumption (rebuttable, of course) of negligence on their part?

Prompted by authority of this kind, Lord Evershed appears to have lent some support to the presumption of law theory—more particularly by discounting unduly the *dicta* of Langton, J., in *The Kite* and of Lord Dunedin in *Ballard's* case. The Master of the Rolls in fact said that "if . . . Langton, J., meant to lay it down that in a case of *res ipsa loquitur*, that is to say, a case in which the onus has been cast upon the defendants, it is sufficient to discharge that onus for them to show that the accident *might* have occurred for more than one reason some of which reasons are consistent with the absence of negligence, then it seems to me that the conclusion is not justified." This explanation of Langton, J.'s *dictum* seems unexceptionable, and in so far as Streatfeild, J., sought to interpret it to the contrary by regarding a merely theoretically possible explanation as sufficient to discharge the onus, it is submitted with respect that his judgment could not be supported and was rightly reversed by the Court of Appeal. But it is to be hoped that the Court of Appeal's explanation of the *dictum* will not be interpreted as having dismissed the eminently sensible proposition, which is still inherent in the authorities, that a defendant can rebut the maxim by giving a *reasonable* explanation of how it could have happened without his negligence.

It is interesting to notice before leaving this case that no intricate discussion of how far a defendant need go to rebut the maxim was ever really necessary on the evidence as it emerged at trial, for so far from the defendants having advanced even a possible explanation, the effect of all the evidence was simply to show that the accident was inexplicable. On any view, therefore, it had failed to rebut the presumption which was raised.

Should the maxim be pleaded?

It is, perhaps, worth mentioning two other features about the doctrine of *res ipsa loquitur*. The first is that there is some doubt how far it is necessary for it to be pleaded expressly. In *Carmarthenshire County Council* v. *Lewis* [1955] 2 W.L.R. 517, the House of Lords, with the notable exception of Lord Oaksey, found against the defendants on the basis that the presence of an infant schoolchild, of whom they had charge, upon the highway in itself required them to give an explanation of the child's presence there which was consistent with no negligence on their part. This was plainly an application of the maxim, although none of the law lords referred to it by name—and although the case had not been pleaded upon this basis.

Less than a year later, however, in *Esso Petroleum Co., Ltd.* v. *Southport Corporation* [1956] 2 W.L.R. 81; *ante*, p. 32, the House of Lords has solemnly affirmed the importance of pleadings and found against the plaintiffs, who were complaining of the discharge of oil from a stranded steamer, on the ground that the defendants had adequately met every particular of negligence charged against them. The answer perhaps must be that, although it is not necessary to plead the maxim in so many words, it is certainly necessary to reserve the right to rely upon it; for it is now plain that, if a plaintiff particularises his allegations exhaustively, he cannot then seek to invoke the doctrine of *res ipsa loquitur*.

A new development

The second feature which might be noticed with some anxiety is the development of a special breed of *res ipsa loquitur*, applicable for example to cases in which a "head-on" collision has occurred between two motor vehicles in the centre of the highway and there is no evidence to show which of the two drivers is at fault. In *Baker* v. *Market Harborough Industrial Co-operative Society, Ltd.* [1953] 1 W.L.R. 1472, the Court of Appeal held, *per* Denning, L.J., that "proof of the collision is held to be sufficient to call on the two defendants for an answer." It is to be hoped that this does not represent the birth of a plural version of the maxim—*res ipsæ loquuntur*.

It is surely more helpful to join with Greer, L.J. (in *Langham* v. *Governors of Wellingborough School and Fryer* (1932), 101 L.J.K.B. 513, at p. 518), in regarding the maxim as only a branch of a larger rule that, if the proved facts render it reasonably probable, in the absence of explanation, that the defendant was negligent and that the damage was caused by that negligence, it is for the jury (or for the judge in that capacity) to say whether the case is or is not established.

To end, as we began, with Lord Shaw: "The day for canonising Latin phrases has gone past."

R. E. G. H.

Mr. A. T. CHEEK has been appointed an assistant Official Receiver in the Bankruptcy (High Court) Department.

The following appointments are announced in the Companies (Winding-Up) Department: Mr. F. M. COLLINS to be Senior Official Receiver, Mr. G. F. MORRIS to be Official Receiver and Mr. H. C. GILL to be an assistant Official Receiver.

Mr. W. W. JORDAN has been appointed Official Receiver for the Bankruptcy District of the County Courts of Cardiff and Barry; Blackwood, Tredegar and Abertillery; Newport (Mon.); Pontypridd, Ystradyfodwg and Porth; and the Bankruptcy District of the County Courts of Swansea; Aberdare; Aberystwyth; Bridgend; Carmarthen; Haverfordwest; Merthyr Tydfil; and Neath and Port Talbot.

Mr. AUDLEY MCKISACK, Attorney-General, Federation of Nigeria, has been appointed Chief Justice, Uganda.

Mr. RONALD JACK MEDDINGS, deputy town clerk of Wolverhampton, has been appointed town clerk and clerk of the peace of Wolverhampton, with effect from 17th September, in succession to Mr. A. G. DAWTRY, who has been appointed town clerk of Westminster.

Mr. T. H. PARKER has been appointed Official Receiver for the Bankruptcy District of the County Courts of Brighton, Eastbourne, Hastings and Tunbridge Wells.

Mr. J. M. ROGERS, solicitor, of Dolgelley, Merionethshire, has been appointed Superintendent Registrar of births, deaths and marriages for Merioneth South, in succession to his father, the late Mr. John Rogers.

Mr. E. C. SHERWOOD has been appointed chief clerk attached to the Office of the Inspector-General in Bankruptcy (London), with effect from 1st June.

A Conveyancer's Diary

STANDARD RENTS—THE INQUIRIES TO BE MADE

A good deal of what I meant to say in this "Diary" about the decision in *Goody* v. *Baring* [1956] 1 W.L.R. 448 and p. 320, *ante*, has already been said in a letter from a correspondent which appeared at p. 357, *ante*. I agree entirely that any information which may be supplied by the tenant in answer to an inquiry what is the standard rent for the accommodation which he is occupying can afford absolutely no protection against the right of the tenant to have his rent reviewed in accordance with the Rent Acts. As this correspondent justly points out, the doctrine of estoppel cannot exclude the Acts; that was one of the matters decided in *Solle* v. *Butcher* [1950] 1 K.B. 671. But even if the tenant himself were estopped by representations made to a purchaser of the premises from taking advantage of his rights under the Acts, the estoppel would affect that tenant only, and the rent exigible for the premises after that particular occupation would be the standard rent. If therefore the defendant in *Goody* v. *Baring* had made the inquiries suggested by Danckwerts, J., of the two tenants of the rented portions of the property and received the answers that the standard rents were the rents actually being paid, it would seem that the damage which was the foundation of the plaintiff's claim in the case would still have been suffered, on any footing; and that the damage would still have been attributable to the defendant's failure either to push his inquiries further or to inform the plaintiff that he had been unable to satisfy himself on this question of what were the standard rents.

Tenant's occupation is notice to purchaser

The suggestion that inquiries of this kind should be made of the tenant was said by the learned judge to be a deduction from the case of *Hunt* v. *Luck*. The reference in the Weekly Law Reports is to the report of the decision of the Court of Appeal at [1902] 1 Ch. 428. But the judgment more usually referred to in the case is that of Sir George Farwell, J., which was affirmed on appeal, and which is reported at [1901] 1 Ch. 45. But wherever it is looked for, it is easier to say what *Hunt* v. *Luck* decided was not, than what the case decided was; the headnotes to the two reports are almost identical and the principle they show is that a tenant's occupation of land affects a purchaser with notice of all that tenant's rights, but not of his lessor's title or rights.

The word "notice" is the key word here. If there is a legal tenancy, a purchaser of the fee simple takes subject to that tenancy, notice or no notice. The principle which, it was argued (unsuccessfully) in *Hunt* v. *Luck*, should have been there applied to infect with notice of the reversioner's rights a purchaser of a fee simple was one which there is only need to apply where the rights are rights in equity. This is, I think, clearly brought out by the statement of the law of Lord Kingsdown (then Mr. Pemberton Leigh) in *Barnhart* v. *Greenshields* (1853), 9 Moo. P.C. 18, which both Farwell, J., and the Court of Appeal accepted as correct in *Hunt* v. *Luck*: "With respect to the effect of possession merely, we take the law to be that if there be a tenant in possession of land, a purchaser is bound by all the equities which the tenant could enforce against the vendor . . . the possession of the tenant is notice that he has some interest in the land, and a purchaser having notice of that fact, is bound according to the ordinary rule, either to inquire what that interest is, or to give effect to it, whatever it may be."

The principle seems rather far away from the case where a tenant has statutory rights. But in criticising the decision of Danckwerts, J., in *Goody* v. *Baring* it should be remembered that the case was argued by counsel of whom the leading counsel for the plaintiff and the counsel for the defendant practised normally in the common-law courts, and the learned judge, as he observed in a preface to his judgment, had not been provided with much assistance in regard to the matters which he had to decide. If the case had been argued by counsel with more conveyancing experience, and *Hunt* v. *Luck* had been put forward on one side, the chances are that it would have been put in perspective by the other.

The trouble in *Goody* v. *Baring* was that the defendant when he saw the vendor did not in terms ascertain from him what the standard rents were; he ascertained only what the rents receivable when the vendor had bought were. The learned judge had two comments to make on the action of the defendant at this time. First, when the defendant made these inquiries of the vendor he had in front of him a set of printed "Inquiries before contract" (the relevant parts of which are fully set out in the judgment) which did not in terms contain an inquiry as to what was the standard rent of any part of the property which was let and subject to control; these printed inquiries seemed to the court to be deficient in this respect. Secondly, having failed or omitted to obtain this information from the vendor, the defendant allowed the matter to rest there, and on this the learned judge observed that he could not help thinking that a solicitor who knew his duty, and was not hampered by acting for both parties, would have pursued the subject more vigorously. As to the first of these comments, one can only agree. There has been a welcome tendency in recent years to simplify common-form conveyancing documents and stationery both in language and lay-out. The ideal is to break up inquiries (whether before contract or by way of requisition) in paragraphs and sub-paragraphs so that the answer to each question or sub-question can be placed in an indicated space: an omission can then immediately be seen. By this test the form used in this case was deficient.

Extent of solicitor's duty to inquire

As to whether the defendant ought to have pursued his inquiries, again there can only be one answer; either he should have done so or he should have made it clear to the purchaser that he had not. This omission was ascribed by the court in part at least to the fact that the defendant was acting for both parties. I have already given my views on the general strictures which were passed in this case on the practice of a solicitor acting for both parties in conveyancing transactions, but I am bound to say that to some extent these observations on the defendant's particular default were justified. But the real trouble here lay, I think, in the attempt to conduct this part of the transaction by interviews only. If the defendant, after seeing the vendor, had put the result of his inquiries on paper in a letter to the purchaser it must have become apparent that what had been ascertained was not the standard rents of the parts of the property which were let, but the actual rents received over a period, and that something more therefore remained to be done—either to make further inquiries, or to inform the purchaser that, to this extent, he was buying a pig in a poke.

It comes down to this. The practice of acting for vendor and purchaser (and sometimes for a mortgagee as well) in the same transaction is a well established one, and for more than one good reason popular with lay clients. When the decision in *Goody* v. *Baring* has receded in time much of what was said there about this practice will be forgotten. But I hope that the case will not be completely forgotten. Acting for both parties demands an extra degree of vigilance at all stages of the transaction. It is not easy to look at something from two points of view at the same time, and wherever practicable it may be a good thing for the interests of the two parties to be looked after by two separate persons in the office. If that is impossible, the deliberate interposition of an interval of time in the despatch of a particular piece of business, so that it can be looked at first from the point of view of one party's interests and then after an interval from the point of view of the other's, may afford a valuable safeguard against the risk of an unconscious omission to protect one of the parties as it is one's duty to protect him. The phrase "at arm's length" has to some a rather violent connotation, but negotiations conducted at arm's length are usually in all things, except immediate expense, the most satisfactory. It should not be impossible to work out a procedure which would have the result of keeping the parties notionally at arm's length while physically their interests are in the same office.

"A B C"

Landlord and Tenant Notebook

CONTROL: SHARED ACCOMMODATION

In *Goodrich* v. *Paisner and Others* [1956] 2 W.L.R. 1053 (H.L.); *ante*, p. 341, it was held, as mentioned in our "Current Topics" on 28th April (*ante*, p. 305), that where the letting of a dwelling-house conferred on the tenant the right to use a "living room," but not to use it simultaneously with others, there was no "sharing of vital living accommodation" which would take the letting out of the Rent, etc., Restrictions Acts, 1920 to 1939.

Those concerned with the workings of those Acts will have watched the proceedings with interest, as the famous decision in *Neale* v. *Del Soto* [1945] K.B. 144 (C.A.) came under attack. Had the validity of that authority been impugned, then the remedial legislation contained in the Landlord and Tenant (Rent Control) Act, 1949, ss. 7 and 8, would have represented a waste of good Parliamentary time. The House of Lords has, however, upheld *Neale* v. *Del Soto*, the majority drawing a distinction not hitherto drawn.

The *Neale* v. *Del Soto* principle

The Acts apply to "a house or a part of a house *let as a separate dwelling*. . .": Increase of Rent, etc., Restrictions Act, 1920, s. 12 (2). Thus (except for the italics, which are, of course, mine) the statutory provision; but it may be useful to recall some judicial descriptions of the object of the legislation. Thus "the clear policy is . . . to keep a roof over the tenant's or someone's head": Asquith, L.J., in *Brown* v. *Brash* [1948] 2 K.B. 247 (C.A.); "the real fundamental object is . . . protecting a tenant from being turned out of his home": Greene, M.R., in *Curl* v. *Angelo* [1948] 2 All E.R. 189 (C.A.); and "one object of the Acts was to provide as many houses as possible at moderate rent": Scrutton, L.J., in *Skinner* v. *Geary* [1931] 2 K.B. 546.

The facts of *Neale* v. *Del Soto* were very unusual: the tenant had exclusive possession of two rooms in a seven-roomed house and "shared" with the landlord not only the kitchen but also the conservatory, bathroom, garage and coal-house. It was soon demonstrated that the decision did not mean that the sharing of *any* part of the accommodation included in the tenancy contract which is essential to the conception of a dwelling-house, according to ideas held at the present day, prevented the letting from being a letting of a part of a house as a separate dwelling: the county court judge who had adopted this proposition was corrected by the appellate court in *Cole* v. *Harris* [1945] K.B. 474.

The *Cole* v. *Harris* "test"

The "shared accommodation" in this case was a bathroom and w.c., the tenant having three rooms (including a kitchen) to himself and sharing the said accommodation with the landlord and with another tenant. This led to the introduction of a distinction between what are and what are not "living rooms," Morton, L.J. (as he then was), saying in the course of his judgment: "I think that the true test, where the tenant has the exclusive use of some rooms and shares certain accommodation with others, is as follows: there is a letting of part of a house as a separate dwelling, within the meaning of the relevant Acts if, and only if, the accommodation which is shared with others does not comprise any of the rooms which may fairly be described as 'living rooms' or 'dwelling rooms.' To my mind a kitchen is fairly described as a 'living room,' and thus nobody who shares a kitchen can be said to be tenant of a part of a house let as a separate dwelling. . . ." The judgment proceeded: "In many households the kitchen is the principal living room, where the occupants spend the greater part of the day. Very often it is the warmest part of the house and the family tend to congregate there for that reason."

Kitchens and kitchenettes

Practitioners who read the above "true test" may have heaved sighs of relief: at last we know where we are, etc. But alas, in rent control questions simplicity and lucidity do not always go hand in hand. The fact that the illustration first generalises ("a kitchen is fairly described as a living room") and then particularises ("in many households . . .") suggests one weakness; the other is less apparent, and consists not in the omission to distinguish between one room and another, but in the omission to distinguish between one kind of sharing and another.

There have been at least sixteen reported cases in which kitchens, kitchenettes and sculleries have been factors in the decision, but for present purposes it will suffice to mention but a few authorities.

On the question of the status, the reference to occupants spending the greater part of the day, etc., was soon to lose much of its apparent significance. In *Kenyon* v. *Walker* (1946), 62 T.L.R. 702, a sub-tenant had the joint use, with the mesne tenant, of the kitchen—but for the purpose of cooking only. It was Morton, L.J., himself who said:

"After all, the primary purpose of a kitchen is for cooking, and in this case there is no doubt that the use of the kitchen, at any rate for that primary purpose, was shared by the parties. It seems to me that the present case comes both within the wording of the test as I expressed it and as it was expressed by MacKinnon, L.J., in *Cole* v. *Harris*." Later, it was held in *Winters* v. *Dance* (1948), 64 T.L.R. 609, that the sharing of a "kitchenette" 7 ft. by 6 ft. suitable for cooking only excluded the operation of the Acts. As against this, the more recent *Hayward* v. *Marshall* [1952] 2 Q.B. 89 (C.A.) decided that a right to use one's landlord's kitchen for the purpose of drawing water plus a right to use its gas stove for the purpose of boiling washing once a week only did not have that effect.

The possible importance of different varieties of sharing seems first to have been emphasised in *Baker* v. *Turner* [1950] A.C. 401. "I have refrained," said Lord Porter in his speech, ". . . from speaking of a sharing of the kitchen between the two parties, although that expression is frequently used in the relevant cases. The phrase is, in my opinion, inaccurate and may give rise to inaccuracy of thought. A landlord, or for the matter of that, a tenant, who sub-lets a portion of the house he occupies and gives a right to his tenant to use the kitchen, does not share the kitchen. He retains many rights which the tenant does not enjoy." The relevant cases may have included the county court decision in *Rainger* v. *Kerrison* [1947] L.J.N.C.C.R. 288, in which it was held that a contemporaneous agreement licensing a landlord to "use" the kitchen did not take the letting out of the Acts; *Bowler* v. *Williams* [1949] W.N. 180 (C.A.), deciding that an arrangement made after term commenced by which the landlord might use the scullery-kitchen likewise left the letting protected; and *Lewis* v. *Tilley* [1949] E.G.D. 287 (C.A.) in which a tenant was held to have lost protection by allowing the landlord to occupy two rooms and share the kitchen, the rent being reduced (which last factor would warrant the finding of a new grant).

Then, considerable attention to the variety of possibilities was paid by Lord Asquith, L.J., in his judgment in *Rogers* v. *Hyde* [1951] 2 K.B. 923 (C.A.), demonstrating that two people need not "share" in the same sense or on an equal basis. If a lessee has a house less a kitchen plus the right to use the kitchen along with the lessor, the lessee is unprotected; if the whole house is let to the lessee who then grants the lessor a right to use the kitchen in common with himself, the lessee continues protected.

Use of bedroom "in common"

The above indicates the state of the authorities when the plaintiffs in *Goodrich* v. *Paisner*, successors in title to the defendant's original landlord, took proceedings for possession. The tenancy agreement was in writing and in what might be called semi-formal language. What would be the parcels was described as "all those the four rooms now in the occupation of the tenant on the first floor of the dwelling-house known as ——— (hereinafter called 'the rooms') together with the use in common with the landlord of the back bedroom on the first floor." The county court judge concluded that (i) there was a sharing of a room not actually included in the tenancy and (ii) that that room was part of the essential living accommodation, and his judgment in the plaintiffs' favour was upheld by the Court of Appeal.

Ultimately, I think it can fairly be said that two considerations, the meaning of the words "the use in common" in the tenancy agreement, and that of "living room" in the authorities, dominated the deliberations.

As is often the case, the dissenting speech is provocative of much thought. Lord Morton, who reminded the House that his "true test" had not been criticised when *Baker* v. *Turner*, *supra*, was argued before them, agreed that if the position had been like that examined in *Hayward* v. *Marshall*, *supra*, the tenant would have had a separate dwelling; but this was not a case of a defined and limited use. This might be the first occasion in which the courts were confronted with an agreement to share a bedroom; but it could be contemplated that, say, a son of each party would occupy it.

The majority considered that the agreement was too vague, or else that its effect was to confer a right on either party to use the back bedroom when the other was not using it. The terms of an agreement might, Lord Reid said, give parties a right to occupy the room at the same time; but "in any ordinary case" the objections were so obvious that he would not be prepared to hold that a let of several rooms, together with the use in common of a bedroom, meant that there was to be such a sharing unless there were something to indicate that that was the parties' intention.

Lord Radcliffe very cogently pointed out that it could not always be clear what ought to be treated as a "living room" for the purposes in hand. The truth was that a living room could not be identified *objectively* without regard to the situation of its particular occupant, occupants or users. Enjoyment of the common use of a back bedroom ought not to negative the proposition that the tenant of four rooms had a "separate dwelling."

The last point, indeed, would go to show that the decision is in keeping with those judicial utterances on the objects of the Acts which I briefly cited in my third paragraph; and Lord Radcliffe's refusal to solve a "sharing" problem by "predicating that the bedroom was, objectively, a 'living room'" makes one wonder how the "true test" could or would have been applied if the draftsman of the agreement had called it, say, a billiard room. Not even the most enforcement-minded town planning authority could prevent people from sleeping in a billiard room; and, when one comes to consider the importance or unimportance of nomenclature, it may be useful to recall an *obiter dictum* of Charles Dickens, to be found in ch. 25 of the "Pickwick Papers": "By the bye, who ever knew a man who never read or wrote either, who hadn't got some small back parlour which he *would* call a study!"

R.B.

OBITUARY

LIEUT.-COL. E. R. COULMAN, O.B.E.

Lieut.-Col. Edward Raymond Coulman, O.B.E., retired solicitor, of Newport, Monmouthshire, died recently at Newbury, aged 56. He was admitted in 1924.

MR. E. GODDARD, M.B.E.

Mr. Ernest Goddard, M.B.E., solicitor, of Gray's Inn, died on 27th April, aged 68. He was admitted in 1911.

MR. T. H. HINCHCLIFFE

Mr. Thomas Henry Hinchcliffe, solicitor, an ex-Alderman of Manchester, died on 28th April, at Blackpool. He was admitted in 1906.

MAJOR M. GWYN JENKINS

Major Martin Gwyn Jenkins, solicitor, of Port Talbot, died on 26th April, at Porthcawl, aged 72. He was admitted in 1907.

HERE AND THERE

THE NARROW VIEW

THE nice neat world of the planners and public officials bears so little relation to life as it is lived by real human beings that the two worlds seem to touch at hardly any point. For example, to those who plan our income tax it seems, no doubt, perfectly sensible to limit deductible expenses to outgoings standing in a very direct and obvious relation to the earning of the income—direct and obvious enough for even an official to be able to appreciate it. But a businessman who limited himself to that sort of expense would soon have no taxable income worth a moment's inspection. In the "home again" trains from London to the coast you may daily see the buffet cars cluttered with clusters of businessmen, alert and keen and merry drinking their way to Bognor or Brighton. Would the Revenue allow the cost of these rounds and rounds of gin and whisky to rank as a deductible expense? Not, I think, on your life! Yet they are just as much a part of the businessman's business life as anything he does at the office. Business life especially is a matter of contacts. Contacts bring contracts. Drinking on the Bognor train you are penetrating the consciousness of some stranger who will think of you automatically when something in your line of country crops up. The same, of course, is just as true of the author. Stationery and stamps and typing and an occasional entertainment for his publisher would produce precious little saleable literature. *Ex nihilo nihil fit.* An author can't write about nothing, although there are some who do seem to come pretty close to it. Every bit of life he buys is part of his stock-in-trade, his wives, his mistresses, his gambling losses, his fights, his journeys, his quarrels with barmen and waiters, his conversations. We've heard a good deal lately about the hither and thither of Dylan Thomas. No such life, no such poems. It's as simple as that. But would the inspector of taxes have allowed the cost of the life as a deductible expense? An inspector of taxes intelligently bent on increased assessments would follow the law of life and show the widest possible indulgence to lavish expenditure wherever it might produce correspondingly inflated returns.

AGRICULTURAL PIANO

HIS unrealistic adherence to a view of life which is not life causes the official constantly recurring puzzlement when he comes up against the unexpected, which is the most unvarying aspect of one's contact with other people. His profession does not train him to allow for it, unlike that of the disciple of the flexible common law to whom nothing human is alien. He remains obtusely insensitive to the underlying unity which so improbably links all creation. "Turn but a stone and start a wing." (Turn but a knob and hear Henry Hall two hundred miles away.) We now know that the ancients were far nearer the truth than the sceptical materialistic Victorians, with their mechanistic universe, imagined, when they spoke of "the music of the spheres." But the official mind is mechanistic still, which is one excellent reason why its operations should be reduced to the smallest possible compass so as to leave free instinct, empiricism, the unconscious conscience and all the hidden forces by which human beings really carry on their fruitful activities. Thus everybody, except officials, is aware of the profound and subtle influence that music has on human activities. It is obvious enough what it does in the way of inspiring courage and maintaining endurance on the march, for no army ever trained or marched or fought without it. That music is the food of love is just as obvious whether it be the drawing-room and rose-garden love of the comfortable Victorians or the jungle and jive rhythms of Africa and the urban dance halls ("Beat out the rhythm on the drum!"). The old ships were worked to music, as music was an integral part of all work, until nineteenth-century mechanisation separated them. It has been left to "efficiency" specialists to discover in our own day with a rather naive surprise what till then mankind had never before doubted, that "music while you work" improves the quality of the work done. Lately the doctors think they have been discovering the therapeutic value of music, but it is only a rediscovery. You remember how music (as well as visits to the Zoo) was prescribed by an eminent medical man for the unfortunate hero of "The Way of All Flesh" in a period of crisis. Yet in the face of all this evidence of the protean properties of music a court has actually doubted that music improves the milk yield of cows, and accordingly that the transport of a piano is an agricultural purpose. It happened this way. A farmer was prosecuted at Shaftesbury in Dorset for allowing his van to be used when it was not insured. The police evidence was that it was insured for agricultural purposes only but was seen being driven with a piano aboard. But the farmer's defence was that the piano was an agricultural, or, anyhow, a pastoral, implement, that he kept a piano in the cowshed and that it worked wonders with the milk yield. The cows' favourite tune, the one that inspired them to their finest efforts, was, appropriately enough, "The Dam Busters' March," producing veritable torrents in the milk pail. Nevertheless, the farmer was fined £10 and, on the evidence as reported, one cannot but sympathise with him. There may have been other evidence not reported and one hopes that the court was not, on a merely dogmatic scepticism, sweeping aside a practice so inherently sensible in the light of human experience and one which if persisted in and extended would restore culture to agriculture.

RICHARD ROE.

THE SOLICITORS ACTS, 1932 TO 1941

On 23rd April, 1956, the practising certificate of JOHN KENNETH EDMONDSON, of 4 Wetherby Place, Hereford Square, S.W.7, and 20 Bunhill Row, E.C.1, formerly of 14 New Bridge Street, E.C.4, a Solicitor of the Supreme Court, was suspended by virtue of the fact that he was adjudicated bankrupt on 23rd April, 1956.

On 27th April, 1956, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that SIDNEY DAVIDSON, of Warnford Court, Throgmorton Street, London, E.C.2, and No. 141 Stamford Hill, London, N.16, be suspended from practice as a solicitor for a period of one (1) year from 27th April, 1956, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 27th April, 1956, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon EDMUND SCHOFIELD, of Pearl Assurance Buildings, Cow Green, Halifax, Yorkshire, a penalty of fifty pounds (£50), to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

TALKING "SHOP"

May, 1956

WEDNESDAY, 2ND

On my receiving a letter from *X & Co.*, who say that my firm is acting for Mr. *B* in a certain transaction involving estate duty problems (though no word from Mr. *B* on the subject as yet), I telephone to Mr. *B*. Says he: Messrs. *X & Co.* have insisted upon his being advised by solicitors; he can see no necessity for it himself, he "knows all the answers." I express polite interest, also regret that he should be bothered by and with lawyers, and suggest that he asks *X & Co.* to waive the condition. He says no; he would like us to act, provided of course it is clearly understood that it is a mere formality and the charges are to be nominal accordingly. No comment, except that I shall be pleased to look into the matter and advise; costs will be for consideration on completion; his request shall be borne in mind. And so it will be, but not to much purpose. All this took place many months ago. The transaction, after one complete rupture of negotiations, now drags its slow (and expensive) length along. Mr. *B*, meanwhile, has learnt that it is more important to know the questions than "all the answers," and even more important to divulge the full history to his lawyer at the initial stage.

TUESDAY, 8TH

Here is a problem which falls neatly into the condominium of "A B C" and R. B. and would be far better suited to critical analysis in those senior columns of this journal. So I will do no more than state the case, the advice (though hesitant) that I have given on it and the clients' views.

By his will Mr. *V* settled his residuary estate upon the usual trusts for sale and conversion, with a protected life interest to his widow, Mrs. *V*, and remainders over in favour of his children and remoter issue—a class which at present includes a number of infants. Comprised in the residuary estate is a house retained by the trustees under their power to postpone conversion, which Mrs. *V* some years ago (and seemingly without authority) let to a tenant, *T*. The letting was later ratified by the trustees. The contractual tenancy has now expired and the tenant is holding over as a statutory tenant. The trustees wish to sell the property with vacant possession and *T* says that he is willing to go if they will pay him £600. The trustees are advised that they should be able to obtain £1,000 more for the property without a statutory tenant than with one, and are thus receptive of the proposal. The following questions arise:—

(1) Is such a payment permissible under the Rent Acts?

(2) If yes, have the trustees the requisite authority (*a*) to accept a surrender; (*b*) to pay for it?

(3) If yes, should the payment be debited to capital or income, or apportioned between the two and, if so, on what basis?

Tentative answers are as follows:—

(1) Yes; such a payment may be made by the trustees as landlords, but not by any other person. See s. 15 (2), Act of 1920, which provides that "any tenant retaining possession as aforesaid shall not as a condition of giving up possession ask or receive the payment of any sum, or the giving of any consideration by any person *other than* the landlord . . ."

To digress a little, it will be noted that the emphasis is on activities of a statutory tenant, not upon those of the other party to the transaction. But it does not seem to follow that this is a case where it is more blessed to give than to receive. "*Any* person acting in contravention of this section shall be liable on summary conviction to a fine not exceeding £100 . . ." is what the subsection goes on to say; so, quite apart from any question of abetting, presumably it is not only tenants who can incriminate themselves. But from the practical aspect there is no need to look further than the veto placed upon the tenant, for it takes two to make a bargain and the tenant is at liberty to treat for this purpose with his landlord and nobody else.

(2) (*a*) More than doubtfully, yes. As trustees for sale the trustees have all the powers of a tenant for life under the Settled Land Act, 1925 (s. 28, Law of Property Act, 1925). Thus they may exercise a tenant for life's powers to "accept, with or without consideration, a surrender of any lease": s. 52, Settled Land Act. But here is the element of doubt. Is that amorphous "state of irremovability" of a statutory "tenant" (so-called) to be equated with a lease? Section 117 (1) (x) of the Settled Land Act defines "lease" so that the term comprehends an agreement for lease; on statutory tenancies it is silent. A great deal depends, as with so many of these things, on the eye of the beholder. On a broad view the section covers it; to the conveyancing purist (who perhaps rightly regards the statutory tenant as no tenant at all but as a statutory encroachment) it does not.

(*b*) Subject to the same ample reservations, yes. The words "with or without consideration" in s. 52 (see above) are adequate for the purpose, but only if one takes the same liberal view that a statutory tenancy is to be treated on the same basis as a lease.

(3) It appears that, except with the leave of the court, the trustees have no option but to debit the payment to income. The relevant provisions (in so far as we reject the purist view) are paras. (xi) and (xiv) of s. 73 (1), Settled Land Act, 1925 ("modes of application of capital money"). Paragraph (xi) allows of capital money being applied "in purchase of land in fee simple or of leasehold land held for sixty years or more unexpired at the time of purchase . . ." And under para. (xiv) capital money may be applied "in the purchase, with the leave of the court, of any leasehold interest where the immediate reversion is settled land . . . notwithstanding that the leasehold interest may have less than sixty years to run."

The inference from these paragraphs is clear and is thus explained in the footnote to s. 52 (1) of the same Act in Wolstenholme & Cherry's Conveyancing Statutes, vol. 2, at p. 1061 (brackets and italics supplied):—

"If the tenant for life purchases a surrender from a lessee, he must pay the consideration money himself, unless the term has more than sixty years to run (in which case *it is conceived* the purchase could be made under s. 73 (1) (xi)) or unless the court gives leave under ib. (xiv)."

Why the learned authors of that most reliable work chose to make an approach of Agag towards para. (xi)—see italicised portion above—I am unable to explain. Bolder or rasher spirits willing to swallow the camel of a statutory tenancy will not readily strain at this gnat. But even so, few, I imagine, would find in "sixty years to run" a phrase that aptly fits a statutory tenancy.

So it seems that, if the trustees are to pay this money at all, they must either debit income or apply to the court. If they decide to apply to the court, then, having regard to these doubts about the relevance to a statutory tenancy of s. 73 (1) (xiv), they may well be advised to frame their application also under s. 64 which is of general application.

If any reader has manfully struggled so far he may be interested to hear the clients' views, which are not complimentary to the law as so interpreted. The trustees think it remarkable that it is only at the expense of income that they can secure a capital profit. Mrs. *V* finds it grotesque that at the age of seventy-six she should be invited to part with £600 of her spendable income in one year, and this for the prospect of a paltry annual addition to it for the rest of her life of about £50 gross or £10 net (a figure which allows for sur-tax). Finally, the trustees (who, by the way, are not willing to act on an indemnity) point out that, if they do make a successful application to the court, the consideration payable to *T*, plus the costs of an originating summons, will go far to swamp their prospective capital profit.

To all this there is the lawyer's answer that some thirty years after the Birkenhead legislation it is no matter for surprise that a few minor cracks in that mammoth and solid structure are beginning to develop. Not that this cuts any ice with clients, who naturally expect the law to keep pace with the times. It seldom does.

FRIDAY, 11TH

It is difficult to escape from problems of capital and income. Another awkward conundrum of this kind arises in the estate of *S* who, like *V*, has left a will under which infant grandchildren have an interest in residue. Shortly before his death *S*, wishing to provide an annuity for his sister-in-law, *G*, completed a proposal form and paid the premium. Unfortunately, having regard to the form of the proposal and other circumstances, it is all too plain that there was never a completed gift or completely constituted trust in favour of *G*; the annuity, which is for the term of *G's* life, thus belongs to the estate of *S*.

Now the adult beneficiaries under the will would like to give effect to the evident intentions of *S*, so it is suggested, on the footing that the annuity is income, that they have only to direct the executors to pay it to *G*. The basis of this deceptively simple suggestion is the easy assumption that because the annuity is liable to income tax it is income*; *ergo*, no infants being entitled to income under the will at present, the adult beneficiaries may direct the executors to mandate the whole of it, until further notice, to *G*. Unfortunately, as it turns out, the assumption is entirely wrong. See *Re Fisher; Harris* v. *Fisher* [1943] 1 Ch. 377 and *Re Hey's Settlement Trusts* [1945] 1 Ch. 294, following the principle of *Crawley* v. *Crawley* (1835), 7 Sim. 427. It appears that once the executors decide to exercise their power under the will to postpone sale of the policy, the annuity is to be treated as capital and invested accordingly. Pending such a decision instalments must be apportioned on the principle of the *Chesterfield* case (1883), 24 Ch. D. 643. This was the ruling in *Re Hey's Settlement Trusts* (at p. 315), and the same conclusion was reached in the *Fisher* case, where the facts were similar (a case of an intestate estate comprising a policy for a terminal annuity).

The "office" case of *S* that I have mentioned as an introduction to this subject is not, perhaps, of any great interest of itself, and in due course the adult beneficiaries will put matters right for *G* by means of a deed of covenant. But the principle of the old *Crawley* case, above cited, does appear to be of no small importance to executors and trustees, as well as to draftsmen of wills. The temptation (and the general tendency, I would say) is to treat regularly recurring receipts in an estate as income without too much attention to their nature and origin; and when one finds that income tax is payable, or even deducted at source, the natural thing is to treat the receipt as income and pay it to the tenant for life. This is not a reliable procedure and is calculated to lead to painful shocks.

In the *Fisher* case Bennett, J., said: "There was not, and is not, any tree belonging to the intestate of which the annual payments are the fruits" and, at the same page (382), "An oak tree remains an oak tree, although the parties . . . agree to call it an acorn." Perhaps the safest course—and it is what I have noted for my own future guidance—is to treat every seeming acorn as an oak tree until it proves itself an acorn.

"ESCROW."

* But see now cl. 22 of the current Finance Bill.

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THE SOLICITORS' LAW STATIONERY SOCIETY LIMITED

ANNUAL REPORT

The sixty-seventh annual general meeting of the Society was held at Oyez House, Norwich Street, Fetter Lane, on Tuesday, 15th May, Mr. K. D. Cole in the chair.

The chairman's statement circulated with the report and accounts said :—

"I am happy to be able to submit to you a report which shows continued satisfactory progress. The increase in sales, which reached a new record figure, represents almost entirely an increase in volume as prices changed very little during the year. The restrictions imposed on credit appear to have had little effect so far on the level of conveyancing or company formation, and the many sides of our business which depend on these activities were well occupied throughout the year. We have developed the sale of mechanical aids to efficiency in solicitors' offices and have further increased our facilities for the photo-copying of documents. We have received gratifying indications that the reputation which the Society enjoys among members of the Profession to-day stands higher than ever.

Profit.—The profit for the year of £165,618 constitutes a new record and results from a steady effort in all departments to increase sales and to offset rising costs by increased efficiency.

Reserves.—In view of the heavy capital expenditure on building we shall have to meet in the next two years, it is proposed to transfer £20,000 to the Rebuilding Reserve, against £10,000 last year. The proposed addition of £5,000 to the Reserve against Loss on Purchase Tax represents approximately the increase in tax arising from larger stocks and from the higher rate imposed in the autumn.

Dividend.—The Directors recommend a final dividend of 8 per cent., less income tax, making 12 per cent. for the year on the increased capital of £300,000, which is the equivalent of 18 per cent. paid last year on the former capital of £200,000. The sum of £56,436 to be carried forward shows an increase of £10,210.

Oyez House.—The demolition of the part of the pre-war building which survived war damage commenced in August but took longer than expected as the substantial construction of the building was shown by its resistance to pneumatic drills. The contract for the southern portion of the new Oyez House was placed on the 29th November, the contract price being £356,993. In excavating for the foundations, the contractors have met with some difficulty owing to the presence of water on part of the site, and this has involved some delay and additional expense. The difficulty has now been overcome and the new accommodation, which is much needed, will, we hope, be ready in the latter half of 1957. A limited extension of our printing works will be possible and careful consideration has been given to using to the best advantage the space which will be available.

Arrangements have been concluded with the Legal and General Assurance Society Limited for part of the cost of the building to be provided by a further loan. The shareholders will appreciate the necessity for the Directors' conservative dividend policy in order that the balance may be met, if possible, from cash resources.

Periodicals.—At the end of last year, a practising Solicitor was appointed Editor of THE SOLICITORS' JOURNAL, probably for the first time since its publication commenced in 1857. The Directors are confident that this appointment will enhance still further the practical value of the journal to Solicitors. Our other weekly periodical, *Rating and Income Tax*, has benefited from the interest aroused in its subject-matter as a result of the revaluation. Both journals show satisfactory increases in the number of subscribers.

South Wales Branch.—The Branch which we opened in Cardiff in May, 1949, has steadily gained ground and is meeting the needs of an increasing number of Solicitors in South Wales and Monmouthshire. Last year it contributed usefully to the Society's profits. Arrangements have been made for the Branch to move about the middle of the year to more convenient premises which have become available in the legal quarter of Cardiff.

Prices.—The increase in the volume of our sales and the effects of our efforts to ensure greater efficiency were the chief factors which enabled us to show such satisfactory results in a year in which costs, both in production and administration, have continued to rise and in which the selling prices of our own products have changed little. As a further contribution towards stabilisation, we announced early this year that, over a wide range of our products and services, our prices would not be increased for the time being notwithstanding the higher wages and overhead costs we were having to meet. Outside the range of goods and services covered by this announcement, increases in costs are being absorbed as far as possible. We have invited the co-operation of our suppliers in carrying out this policy and have met with a very gratifying response.

New Valuations.—The new assessments of our properties in London and the provinces will increase our liability for rates in the next rating year by some £2,500, or about 34 per cent.

Staff.—We are fortunate in having a staff in all departments who show a high level of co-operation in providing our customers with an efficient and willing service. The loyalty of the employees in our London Works enabled us to continue normal working during the recent dispute in the printing trade. Shareholders will, I am sure, wish to join the Directors in expressing their appreciation of the hard work and devotion to duty of managers and staff in all departments.

The Current Year.—It is not possible at this stage to indicate what effect the absorption of increased costs will have on our profit for the current year as this will largely depend on whether the volume of our sales continues to rise and on the success of our efforts to offset the increased costs by further improvements in our methods, a subject to which careful consideration is being given at the present time. So far this year, our sales have been well maintained."

The report and accounts were unanimously approved, and Mr. K. D. Cole and Sir William Alan Gillett, retiring by rotation, were re-elected as directors.

The remuneration of the auditors was fixed for the ensuing year.

The meeting terminated with a vote of thanks to the directors.

Mr. W. Charles Norton, the President of The Law Society, gave a luncheon party on 7th May, at 60 Carey street, Lincoln's Inn. The guests were : The High Commissioner for Ceylon, Mr. Justice Vaisey, Sir Harold Howitt, Sir Sydney Littlewood, Mr. Arthur Wareham, Mr. Ronald Long, Mr. T. G. Lund (secretary, The Law Society).

The offices of the Supreme Court will close on Thursday, 31st May, being the day appointed to be kept as the Queen's Birthday.

A dramatised adaptation of Mr. Henry Cecil's novel, "According to the Evidence," will be broadcast in the B.B.C.'s Home Service "Saturday Night Theatre" series on 19th May.

The winning companies in the *Accountant* annual awards, 1956, for reports and accounts of public companies are Associated Electrical Industries, Ltd., and Folland Aircraft, Ltd. The Lord Mayor of London will present the awards at the Mansion House in June.

In The Law Society's Intermediate Examination held on 22nd and 23rd March, out of four candidates who gave notice for the whole examination, one passed both parts and one passed the law portion only. Out of 236 candidates who gave notice for the law portion only, 162 passed, of whom eight were in the first class. Out of 492 candidates who gave notice for the trust accounts and book-keeping portion only, 300 passed, six with distinction.

NOTES OF CASES

These Notes of Cases are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible, the appropriate page reference is given at the end of the note.

House of Lords

BUILDING CONTRACT: DELAY OF COMPLETION: SCARCITY OF LABOUR AND MATERIALS: CLAIM ON QUANTUM MERUIT

DavisCon tractors, Ltd. *v.* Fareham Urban District Council

Viscount Simonds, Lord Morton of Henryton, Lord Reid, Lord Radcliffe and Lord Somervell of Harrow. 19th April, 1956

Appeal from the Court of Appeal ([1955] 1 Q.B. 302; 99 Sol. J. 109).

The appellant company agreed to build seventy-eight houses for the respondent local authority for a fixed sum within a period of eight months. It attached to its form of tender a letter stating: "Our tender is subject to adequate supplies of material and labour being available as and when required to carry out the work within the time specified." In fact, owing to an unexpected lag in demobilisation after the war, and not owing to any fault of either party, adequate supplies of labour were not available and the work took twenty-two months to complete. In an arbitration the company claimed that the contract was void and that it should be paid on a *quantum meruit* a sum in excess of the contract price. This submission was accepted by the arbitrator and by Lord Goddard, C.J., but rejected by the Court of Appeal. The company appealed to the House of Lords.

Viscount Simonds said that the contractors put their claims on alternative grounds (*a*) that the contract price was subject to an express overriding condition contained in a letter of 18th March, 1946, that there should be adequate supplies of labour and material, and (*b*) that the contract had been entered into on the footing that adequate supplies of labour and material would be available to complete the work within eight months, but, contrary to the expectation of both parties, there was not sufficient skilled labour and the work took twenty-two months, and that this delay amounted to frustration of the contract. As to the first ground, it would be contrary to all practice and precedent to hark back to a single term of preceding negotiations after a formal and final agreement omitting that term had been signed. As to the second ground, the Court of Appeal were unanimously against the contractors and were right. The doctrine of frustration of a contract (for it was that doctrine and nothing else which must be invoked) had never been applied to such a case, unless *Bush* v. *Whitehaven Port and Town Trustees* (1888), 2 Hudson's Building Contracts (4th ed.) 122, was one. It did not follow that disappointed expectations led to frustrated contracts. No case had been cited in which the doctrine of frustration had been applied to circumstances in any way comparable to this case. A building contractor could not work without intermission on his contract which exceeded the contract time and then allege that the original contract had been frustrated and claim to be paid, not the contract price, but on the basis of a *quantum meruit*. That was to make nonsense of the doctrine which, used within its proper limits, served a valuable purpose. The case of *Bush, supra*, was not binding on the House and in so far as it was an authority on the law of frustration, it must be read in the light of numerous decisions of higher authority. It did not support the proposition that where, without the default of either party, there was an unexpected turn of events, which rendered the contract more onerous than the parties had contemplated, that by itself was a ground for relieving a party of the obligation he had undertaken. *British Movietonenews, Ltd.* v. *London & District Cinemas, Ltd.* [1952] A.C. 166 precisely covered this case. The appeal should be dismissed with costs.

The other noble and learned lords agreed in dismissing the appeal. Appeal dismissed.

Appearances: *Russell*, Q.C., and *J. Stuart Daniel* (*Blakeney and Marsden Popple*); *Phillimore*, Q.C., *Chapman*, Q.C., and *M. Stuart-Smith* (*Kingsford, Dorman & Co.*, for *Blake, Lapthorn, Roberts & Rea*, Portsmouth).

[Reported by F. Cowper, Esq., Barrister-at-Law] [3 W.L.R. 37

Court of Appeal

WATER RATE: CLAIM FOR DISCOUNT: COUNTY COURT JURISDICTION

Sowerby Bridge Urban District Council *v.* Stott

Jenkins and Hodson, L.JJ., and Lloyd-Jacob, J. 13th April, 195

Appeal from Halifax County Court.

The defendant was the owner of fifty-six dwelling-houses all situated in the district affected by the provisions of the Sowerby Bridge Local Board Act, 1863, and all of a rateable value below £10. The Sowerby Bridge Urban District Council, as water undertakers in that district, sent to the defendant a demand note in respect of the charges for water supplied by the council to the said properties. He did not dispute that he was liable for the rate, but he contended that he was entitled to a discount of 10 per cent. of the charge on punctual payment by the joint effect of s. 129 of the Public Health Act, 1936, and s. 11 (1) of the Rating and Valuation Act, 1925, which, he submitted, had impliedly repealed s. 72 of the Water Works Clauses Act, 1847, and he made a payment calculated on that basis. The council contested his right to the discount and eventually brought proceedings in the county court to recover the balance which they claimed remained owing to them, that is £6 3s. 9d. The county court judge dismissed the action and the council appealed. On appeal the defendant submitted that the county court had had no jurisdiction to deal with the claim because by the joint effect of s. 62 (1) of the Local Government Act, 1948, and s. 1 (3) (*e*) of the Lands Tribunal Act, 1949, jurisdiction to hear and to determine all disputes concerning water rates had been transferred to the Lands Tribunal.

Jenkins, L.J., said that the council had submitted that the water was not supplied under powers conferred by the Public Health Act, 1936, but under s. 19 of the Sowerby Bridge Local Board Act, 1863. Section 6 of that Act incorporated s. 72 of the Water Works Clauses Act, 1847, which provided that owners of properties of an annual value not exceeding £10 were to be charged for water supplies instead of the occupiers. Under that section no discount for punctual payment was authorised. There was, his lordship said, no repugnancy between s. 72 of the Water Works Clauses Act, 1847, and s. 129 of the Public Health Act, 1936, and, therefore, the enactment of s. 129 of the Act of 1936 did not necessarily have the effect of repealing s. 72 as incorporated into the local Act. Both sections could exist together. The duty and power conferred on the council by s. 72 to charge the appropriate rates on houses within the stated financial limits was, moreover, preserved by s. 328 of the Act of 1936. Accordingly, the rates in question must be regarded as having been claimed by virtue of s. 72 of the Act of 1847 and, therefore, as not being subject to any discount. On the question of jurisdiction his lordship said that it would be inconvenient, to say the least, if all proceedings in which any dispute arose as to liability or as to the amount of the charges for water rate had to be dealt with by the Lands Tribunal, for it might not appear until the proceedings had been launched that there was a dispute. In his lordship's view, the effect of s. 62 of the Local Government Act, 1948, was to leave the jurisdiction under s. 38 (3) of the Water Act, 1945, as it was except in regard to cases of dispute dealt with in the proviso to subs. (3), that is cases where the water undertakers had elected to proceed by cutting off supplies of water instead of taking the defaulter immediately to court. The position was changed by s. 1 (3) (*e*) of the Lands Tribunal Act, 1949, only to the extent that the Lands Tribunal was substituted for a county court as the tribunal to deal with disputes of the same kind. The dispute in question was within the jurisdiction of the county court.

Hodson, L.J., and Lloyd-Jacob, J., agreed. Appeal allowed.

Appearances: *Charles Scholefield* (*Jaques & Co.*, for *Godfrey Rhodes & Evans*, Halifax); *Frank Stockdale* (*David Garsed & Sons*, Elland, Yorks).

[Reported by Miss E. Dangerfield, Barrister-at-Law] [3 W.L.R.

PROCEDURE: APPLICATION THAT LIABILITY BE DETERMINED BY JUDGE AND QUANTUM SUBSEQUENTLY BY OFFICIAL REFEREE

Polskie Towarzystwo Handlu Zagranicznego Dla Elektrotechniki "Elektrim" Spolka Z Ograniczona Odpowiadzialnoscia *v.* Electric Furnace Co., Ltd.

Jenkins and Hodson, L.JJ. 23rd April, 1956

Appeal from Devlin, J.

In action brought by the plaintiff company alleging that the defendant company had committed breaches of certain contracts for the supply to them of plant, the judge directed, pursuant to an application made by the plaintiffs, that the issue as to liability should be determined first at the trial of the action and that all questions as to the quantum of damages, if the defendants were found to be liable, should be referred subsequently to the official referee. The judge further directed that discovery in relation to the quantum of damages should be deferred until after the issue of liability had been established. The defendants appealed.

JENKINS, L.J., referred to *Emma Silver Mining Co.* v. *Grant* (1879), 11 Ch. D. 918, in which Sir George Jessel, M.R., had illustrated the type of case in which the judicial discretion contained in what was now Ord. 36, r. 6, should be exercised to allow different questions arising in any cause to be tried by different modes of trial. His lordship said that no general rule ought to be laid down defining the circumstances in which orders of that type ought to be made, but the kind of case in which an order could usefully be made was one in which the matter directed to be tried first would, when decided one way or the other, be likely to dispose of the case. Reference was made to *Smith & Co.* v. *Hargrove & Co.* (1885), 16 Q.B.D. 183. Generally speaking, an order of this type should not be made unless there was on the pleadings a clear line of demarcation between the issues which it was sought to decide separately. In the present pleadings, the line of demarcation between questions of quantum and questions of liability was not, and possibly could not be, sufficiently defined to make the division practicable. Further, intricate questions of fact were raised; if these were tried in the ordinary way and one party was dissatisfied with the result, there would be a right of appeal, whereas no appeal lay from a decision of an official referee on questions of fact. For these reasons the questions of liability could not be conveniently separated from questions of the quantum of damages at this stage and the order should be discharged. The direction that discovery in relation to the quantum of damages should be deferred should also be discharged.

HODSON, L.J., agreed. Appeal allowed.

APPEARANCES: *Maurice L. Lyell*, Q.C., and *R. J. Parker* (*Linklaters & Paines*); *D. N. Pritt*, Q.C., and *L. J. Solley* (*Harold Miller & Fraser*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 562

BUILDING: "COST-PLUS" BASIS: NO LICENCE: PAYMENT UP TO LIMIT OF FREE ALLOWANCE

Frank W. Clifford, Ltd. *v.* Garth and Another

Denning, Birkett and Parker, L.JJ. 27th April, 1956

Appeal from Harman, J. (sitting as an additional judge of the Queen's Bench Division).

In 1954 the first defendant, who was the owner of certain premises in Shepherd Market, W., engaged the plaintiffs, a firm of builders, to carry out certain work on the premises, which was done between 3rd April and 11th July of that year. During that period the provisions of reg. 56A regarding the control of building operations were in force, but by virtue of art. 3 of the Control of Building Operations (No. 19) Order, 1953, it was permissible to execute licensable work on any single property in the year 1954 to the extent of £1,000 without obtaining a licence. The first intention of the defendant was to construct a coffee bar on the ground floor, but she later decided also to instal a restaurant in the basement. It was found that the premises were in a bad state of repair and, in the result, a substantial amount of strengthening and reconstruction had to be done, which was carried out by the plaintiffs under the supervision of the defendant's architect. It was agreed, as the amount of the work necessary to be done could not be foreseen, that the plaintiffs should do whatever was necessary, being paid on a "cost-plus" basis. In the result, the total value of the work executed, some of which did not require a licence under the regulations, was £1,911 1s. No building licence had been obtained. The defendant paid a certain sum on account, but disputed the balance. In an action brought to recover the balance of £1,324, the defendant contended that as there was no building licence in force, and as the work done had exceeded the free limit of £1,000, the plaintiffs' claim was void for illegality. Harman, J., held that the plaintiffs were entitled to recover in respect of certain items which were non-licensable under the regulations, and in respect of licensable work up to the limit of £1,000; he gave judgment for £1,078, comprising (*a*) £1,000 in respect of licensable work, less £146 licensable work previously done on the premises by other contractors, and (*b*) £224 in respect of non-licensable work. The defendant appealed as to the £854 awarded for licensable work.

DENNING, L.J., said that there had been many cases where work had actually been licensed; in those cases it was held that it was only work done in excess of the licence which was unlawful; the builder could recover for the licensed figure, but not for the excess. The present case was the first in which there was no licence at all, but only a free limit. If there was an entire contract for a lump sum of over £1,000 for a single and indivisible work, and the builder executed the work without a licence, it would seem that the whole would be illegal and the money irrecoverable. But in the present case the price could not be ascertained beforehand, and the work was done on a "cost-plus" basis. In such a case it was perfectly lawful for the builder to go on up to the full extent of the free limit; it did not become unlawful until the limit was exceeded. For the excess the builder could not recover, but he was entitled to the amount coming properly within the free limit. The appeal should be dismissed.

BIRKETT and PARKER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *J. T. Molony*, Q.C., and *L. J. Belcourt* (*Beach & Beach*); *J. C. Lawrence* (*Wilkinsons*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 570

SETTLED LAND: IMPROVEMENT: APPLICATION OF CAPITAL: INCOME TAX ALLOWANCE NOT DEDUCTIBLE

***In re* Pelly's Will Trusts; Ransome *v.* Pelly and Another**

Lord Evershed, M.R., Jenkins and Hodson, L.JJ.

27th April, 1956

Appeal from Wynn Parry, J. ([1955] 3 W.L.R. 696; 99 SOL. J. 797).

The tenant for life of an estate under a will, in the course of occupying and farming it, carried out improvements falling within s. 73 (1) (iv) of the Settled Land Act, 1925, and pursuant to the powers conferred on him by s. 75 (2) of that Act he directed the trustees to refund to him out of the capital moneys of the settlement the cost which he had incurred. In a summons taken out by the trustees of the settlement, the tenant for life was ordered to pay to the trustees or to be accountable to them for allowances made to him under the Income Tax Acts which were attributable to the sums which the trustees had paid to him out of the capital moneys. The tenant for life appealed.

LORD EVERSHED, M.R., said that the cost had in this case been incurred by the tenant for life and reimbursed to him subsequently and his (his lordship's) judgment was limited in application to that type of case. In those circumstances the tenant for life was entitled to retain the tax relief which he recovered, for he was by the terms of the settlement entitled to the whole income of the settled property. That right imposed on him, in the capacity of occupant of the land or trader thereon, the obligation for payment of income tax, the amount of the charge being reduced by virtue of the Income Tax Acts because of the improvements he had done. If he had had to account to the trustees for a sum equivalent to the tax allowance he would have to so account to them by payment back of part of the income and he would not, therefore, be in receipt of the whole income of the settled property. Reference was made to *In re Biss* [1903] 2 Ch. 40–56. The case was distinguishable from the type of which *Williams* v. *Barton* [1927] 2 Ch. 9 was an example, in which the donee became entitled to some payment which was additional to that to which he was entitled by the terms of the will. It might seem to be wrong that the tenant for life should be enriched by the relief

which was allowed to him on the footing that he had personally provided the cost of the works, but the test was, what was he entitled to receive under the settlement? The *Keech* v. *Sandford* doctrine (1726), Sel. Cas. Ch. 61, that a trustee cannot make a profit out of his trust, was subject to qualification when applied to a tenant for life, for a tenant for life who exercised his admittedly fiduciary powers in directing reinvestment of the trust fund as a result of which he obtained an increased income, would not be accountable for the added income, assuming that the direction was otherwise justifiable. The line of cases of which *In re Pettitt* [1922] 2 Ch. 765 was an example was distinguishable, for as *In re Batley* [1952] Ch. 781 showed, the ratio of those cases was that the extent of the gift to the annuitant was of a fixed sum described by reference to tax liability, whereas in the present case the right of the tenant for life to the full enjoyment of the settled property and its income during his life was not by the settlement made referable to such a limitation.

JENKINS and HODSON, L.JJ., agreed. Appeal allowed.

APPEARANCES: *Charles Russell*, Q.C., *D. H. McMullen*, *H. B. Magnus*, *A. W. L. Franklin* (*Fairfoot & Co.*); *Raymond Jennings*, Q.C., and *Denys Buckley* (*Ashley, Tee & Sons*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [3 W.L.R. 26

Chancery Division

ESTATE DUTY: ANNUITIES

In re Weigall's Will Trusts

Harman, J. 12th April, 1956

Adjourned summons.

A testator settled his entire estate on trust "for the disposal of income and capital as hereafter provided—Of the income derived from same . . . an annuity of £5,000 to my brother H. P. W. and in the case of his predeceasing his wife the said £5,000 to be paid yearly to W. B. W."—the brother's widow. By a codicil the testator reduced the annuity to £3,500 "in the case of H. P. W. this latter [annuity] with reversion to W. B. W."

The testator directed "the remainder of the income" including the annuity, as and when released, should be payable, as to two-thirds and one-third respectively, to two nieces; and he gave the capital to the children of the nieces in the same proportions as their parents were entitled to the income of the residuary estate. On the death of the brother, H. P. W., in the lifetime of his wife, W. B. W., the plaintiffs as trustees of the will took out this summons asking the court to determine: (1) whether on the true construction of the testator's will and codicil and ss. 1 and 2 of the Finance Act, 1894, estate duty became payable on the death of H. P. W. (*a*) under s. 1 of the Act, and only on the value of a continuing annuity of £3,500 per annum for the remainder of the life of W. B. W., or (*b*) under s. 2 (1) (*b*) of the Act on the capital value of the proportion of the residuary estate required to produce an annuity of £3,500; (2) If question (1) should be answered in the sense of (*b*), whether W. B. W. was liable to account for interest on a rateable proportion of the estate duty so payable corresponding to the proportion which the sum required to produce the annuity bore to the whole of the residuary estate.

HARMAN, J., said there were two views: one was that this was a continuous piece of property which came into existence on the death of the testator and continued in existence notwithstanding the death of his brother—in which case there was a passing of that property from the brother to his widow under s. 1 of the Finance Act, 1894; the other view was that a chose in action represented by the annuity ceased on the death of the brother upon which a new and what was usually called a reversionary annuity arose in his widow—in which case duty was exigible under s. 2 (1) (*b*) of the Act. Section 2 applied to cases where an interest did not pass on a death, but where there was a cesser of an interest on the death and a new benefit arose to somebody else. If there were no authority on the matter he should feel no doubt that nothing passed on the death of the first annuitant; his annuity then stopped, and another annuity arose in favour of his widow. The Crown argued that in the present case one could not find one piece of property—there were two several rights in two several persons. That was supported by *In re Austin Motor Co., Ltd's Policies*; *In re Payton, deceased* [1951] Ch. 1081. That case was different from the present in that it arose under a pension scheme and not under a will, under covenant and not under benefaction, but the Court of Appeal did lay down this general proposition: "that for s. 1 of the Finance Act, 1894, to be applicable there must be property passing, that was some property identifiable and persisting independently of the beneficial interests in it." It was held in that particular case that the only right of property which emerged from the policies was a chose in action and that a mere chose in action could not be considered or apprehended apart and separately from the right to enjoy the benefit contracted to be given. The *Duke of Norfolk's* case [1950] Ch. 467 and *Cassel's* case [1927] 2 Ch. 275 were distinguished in the judgment of the court, and it was said that in neither of those cases was there a mere chose in action but something more, which was a piece of property. In the present case, he could not see that there was anything but a mere chose in action arising in favour of the two beneficiaries successively on the death of the testator and on the death of the first taker, and it seemed to him that nothing passed. He felt at liberty, particularly having regard to *Payton's* case [1951] Ch. 1081, to follow his own view that nothing passed, and that a new beneficial interest arose on the death of the testator's brother which was now vested in the first defendant, and that in consequence the charging section was s. 2 (1) (*b*) and not s. 1. Dealing with question 2, Harman, J., said that this question was ancillary to the first question and concerned the incidence of the duty, which was exigible on the slice of the estate notionally (and not in reality) necessary to support the fallen annuity. The case bore a strong resemblance to *In re Palmer* [1916] 2 Ch. 391, but it was said that that was not a correct decision having regard to *In re Cassel's Will Trusts* [1947] Ch. 1, decided by Romer, J. That left him in some embarrassment; he did not follow the ground on which Romer, J. decided that point. It did seem here that where there was a slice taken of the whole of the fund which was answerable for both the annuity and the other income payments, and where the residue got no benefit by the cesser of the old annuity, because a new one sprang up exactly in the same terms, equity demanded that the various sums charged on the entirety should bear the duty rateably between them. That was done in *In re Palmer* and, notwithstanding the different view taken by Romer, J. in *In re Cassel's Will Trusts*, he felt that was the right view to follow, and that this was a proper instance of a *Parker-Jervis* [1898] 2 Ch. 643 distribution, and he proposed to declare that W. B. W. was liable to account for interest on a rateable proportion of the estate duty payable, corresponding to the proportion which the sum required to produce the annuity bore to the whole of the residuary estate. Declarations accordingly.

APPEARANCES: *William Arthur Bagnall* (*Kerly, Sons and Karuth*); *Raymond Walton* (*Child & Child*); *Lloyd Stott* (*Clarkson, Wright & Jakes*); *Ronald Cozens-Hardy Horne* (*J. L. Freedman & Co.*); *E. B. Stamp* (*Solicitor of Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [3 W.L.R. 12

SETTLEMENT: DISCRETIONARY POWER TO PAY INCOME IN CERTAIN EVENTS TO CLASS: IMPOSSIBILITY OF IDENTIFICATION

In re Gresham's Settlement; Lloyds Bank, Ltd. *v.* Gresham and Others

Harman, J. 13th April, 1956

Adjourned summons.

A marriage settlement, after conferring a protected life interest in the income of the trust fund on the husband, provided that during the parts (if any) of the life of the husband [*sic*] during which he should not be entitled to receive the income of the trust fund or during such shorter period as the trustee bank should in its absolute discretion think fit the bank should pay all or any part of the said income to or apply the same for the maintenance and personal support or benefit of all or any one or more of the following persons, namely, the husband and his wife, if any, and his children or remoter issue and any persons in whose house or apartments or in whose company or under whose care or control, or by or with whom the husband might from time to time be employed or residing in such proportions and manner as the bank should in its absolute discretion from time to time think proper. A summons was taken out to ascertain whether the discretionary power was valid or void for uncertainty.

HARMAN, J., said that the expression "during the parts (if any) of the life of the husband" was inaccurate, as if he ceased

to be entitled to the income he so ceased once and for all. When it came to the last class of beneficiaries in the event of forfeiture the draftsman had produced confusion by trying to say too much in too few words. Applying, however, a benevolent construction, the words should read " and any persons by or with whom the husband may be employed or residing, whether in their house or apartments, or in their company or under their care and control." Even so the word " residing " raised a difficulty as to the duration of residence sufficient. It was not possible to say with certainty who was envisaged as an object of possible bounty. There must be a number of persons of whom it could not be postulated that they were or were not within the dragnet of this unusual clause; that was fatal to the clause, see *In re Gestetner* [1953] Ch. 672. In that case there was a very large class; one did not know all the people who were in it, but one could postulate whether any given person was or not. In the present case the bank were left uncertain whether any person was or was not an object of their discretionary power. The vice of the phrase must taint the whole clause so as to make it void. Declaration accordingly.

APPEARANCES: *J. A. Brightman; G. A. Rink*, Q.C.; *J. Bradburn* (*Fladgate & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 573**

ADMINISTRATION: BEQUEST OF OPTION TO PURCHASE SHARES: AVAILABILITY FOR DISCHARGE OF TESTATOR'S LIABILITIES

***In re* Eve; National Provincial Bank, Ltd. *v.* Eve and Others**

Roxburgh, J. 25th April, 1956

Adjourned summons.

A testator by his will bequeathed to a beneficiary " an option to acquire from my trustees at par value one thousand of my ordinary shares of one pound each fully paid " in a named company. The testator's estate was solvent but the residue was insufficient to pay in full the debts, funeral and testamentary expenses and other liabilities of the testator. A summons was taken out to decide the question whether on the true construction of the will and by virtue of Pt. II of Sched. I to the Administration of Estates Act, 1925, the shares, the subject of the option, should be transferred (*a*) free from or (*b*) subject to bearing an aliquot part of the debts, funeral and testamentary expenses.

ROXBURGH, J., said that there was a considerable element of bounty in the bequest as the shares were worth more than par. The question was where the benefit stood in the hierarchy of assets for the payment of debts in a solvent estate. An option to purchase could not be a specific grant of shares. If there was a specific bequest at all, it must be of the difference between par and the market value. Such a benefit did not fit in with any reported definition of a specific bequest. In *Bothamley* v. *Sherson* (1875), L.R. 20 Eq. 304, Sir George Jessel, M.R., suggested that a specific bequest was something distinguished by the testator from the residue. The beneficial ingredient in the option had not been distinguished by the testator; that beneficial interest was not a specific bequest. It was not surprising that it had no place in the Schedule to the Act, as property subject to an option must be regarded as the last to be available for the payment of debts. In so far as the property subject to the option was required to meet the debts, the option could not be exercised at all, and the benefit of it was wholly destroyed. But so long as the purchase price was, with the other available assets, sufficient for the payment of debts, it, and not the shares, constituted the fund available for that purpose. Declaration accordingly.

APPEARANCES: *A. A. Baden Fuller; Michael Fox; G. A. Rink*, Q.C.; *Michael Johnston; Peter Foster* (*Sowman, Wells and Potter; Eland, Hore, Pattisson, Nettleship & Butt; Hopwood, Mote & Leedham-Green*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 69**

PRACTICE: BANKRUPTCY PROCEEDINGS BEGUN IN COUNTY COURT: TRANSFER OF MOTION IN BANKRUPTCY TO HIGH COURT

***In re* Kouyoumdjian; *ex parte* The Trustee *v.* Lord and Brindles, Ltd.**

Upjohn, J. 30th April, 1956

Motion.

By an order of the Manchester County Court, dated 10th August, 1954, one Haroutune Kouyoumdjian was adjudicated bankrupt. By a motion, dated 14th December, 1955, his trustee asked for a declaration that a certain payment of £3,000 on 21st May, 1954, to the respondent, Cyril Lord, or, alternatively, to the respondent company, Brindles, Ltd., through their agent, Cyril Lord, was fraudulent and void as against the trustee. By a motion dated 11th April, 1956, the trustee applied to the judge in bankruptcy for an order transferring the first motion to the High Court. The grounds of the application were that it would be more convenient if the motion were heard in London, as a number of the witnesses were resident in London, and that the matter was expected to last more than one day. The respondents did not oppose the application.

UPJOHN, J., said that before he considered the merits of the application he had to consider whether there was jurisdiction under the Bankruptcy Act, 1914, to transfer such a motion to this court while the general administration of the bankrupt's affairs remained in the county court in Manchester, where the order of adjudication was originally made. The application was made under s. 100 of the Bankruptcy Act, 1914. Reliance had been placed on *In re Marquis of Huntly* [1917] 2 K.B. 729, where Horridge, J., said this: " By s. 100 of the Bankruptcy Act, 1914, the matter might have been transferred to London if there was ground for the exercise of the power of transfer. The legislature has invested the county courts to whom bankruptcy jurisdiction is assigned with the same powers as I have." It was said that Horridge, J., thought that the particular application in that case could by itself have been transferred. That was not of assistance, however, because he did not know whether Horridge, J., in referring to " the matter," referred to the whole of the bankruptcy proceedings or merely to the application pending before him, and, of course, the question of the precise jurisdiction under s. 100 was not in issue before that court. Although the opening words of s. 100 (2) were very wide, there was a reference to " proceedings " later in the subsection, and he thought that the proceedings which the legislature had in mind in the concluding part of subs. (2) were the proceedings which initiated the bankruptcy. If that were the true meaning to be placed upon the word " proceedings " it was an indication that, although the opening words were very wide, this subsection meant thereby the proceedings initiating the bankruptcy. No one, of course, doubted that the whole bankruptcy proceedings could at any time and at any stage be transferred from court to court, but he did not think that this subsection was concerned at all with the case of a transfer of a particular application or motion in any particular bankruptcy. It was only referring to the transfer of the whole bankruptcy proceedings. Accordingly, there was, in his judgment, no jurisdiction in this court to accede to the application. Dealing with the merits, his lordship said that he must not be taken as indicating that he was altogether satisfied that, had he jurisdiction, he would make the transfer of this particular motion. It was a matter which remained open. Application dismissed.

APPEARANCES: *N. E. Wiggins* (*Norton, Rose & Co.*, for *Blackburn, Walker & Co.*, Manchester); *G. R. F. Morris* (*H. H. Wells & Sons*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 558**

Queen's Bench Division

MASTER AND SERVANT: NEGLIGENT UNLOADING OF CARGO BY WORKMEN: ONE WORKMAN INJURED

Williams *v.* Port of Liverpool Stevedoring Co., Ltd., and Another

Lynskey, J. 23rd February, 1956

Action tried at Liverpool Assizes.

The Law Reform (Contributory Negligence) Act, 1945, provides by s. 1 (1): " Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage." The plaintiff, who was a member of a gang of six workmen employed by a firm of master stevedores, sustained injuries when a number of bags of sodium carbonate, which formed the cargo of a barge being unloaded by the gang, fell upon him. The collapse of the bags was due to their instability arising from the method of unstowing adopted by the gang contrary to the express and repeated instructions of the hatch foreman in charge and others.

The plaintiff, who was of equal status with his fellow workmen in the gang, was himself expressly instructed to deal with the cause of the instability of the bags and warned of the danger they presented, but he ignored the instructions and he and the other members of the gang continued, in the absence of the hatch foreman, to unstow the cargo by their own method instead of in the manner in which they were instructed. The plaintiff claimed damages for negligence against his employers and the cargo owners, the latter claim being dismissed. Against the employers he alleged that they had adopted an unsafe method of discharge by their servants and agents, other than himself, and that their servants or agents, other than himself, had failed to take notice of the warnings given by the foreman and others. The employers, in effect, put in issue the question whether the members of the gang, other than the plaintiff, were in breach of any duty to him, and contended that the plaintiff voluntarily undertook the unstowing of the bags with full knowledge of the risks involved.

LYNSKEY, J., said that very similar circumstances arose in *Stapley* v. *Gypsum Mines, Ltd.* [1953] A.C. 663, where one of two negligent miners was killed by a fall of roof. The House of Lords held that the employer was liable, because the accident was partly caused or contributed to by the man who was not killed, for whose negligence the employer was responsible notwithstanding the negligence of the deceased. It seemed that, if a number of men engaged in an occupation which was contrary to instructions and dangerous, they nevertheless owed one another a duty to use reasonable care, and that duty was not abrogated by joining together and carrying out a common operation. Even the assent to that operation might, in certain circumstances, amount to a breach of duty to a man who was also carrying it out. It must be held that there was a duty of care owed by each of the gang to each other to take reasonable care in the actual work of unstowing and in the method employed, and, in spite of the plaintiff's tacit consent, the employers were vicariously liable, the test being not whether what was done was contrary to orders but whether it was done in the course of the men's employment. As to the division of responsibility, it would be tempting, in the circumstances, to increase the plaintiff's proportionate responsibility, but the words of the Act of 1945 did not permit that. Certain observations of Lord Reid in the *Gypsum* case, *supra*, at p. 682, directed the court to take more or less a jury view of the responsibility in such cases, taking into account, first, the causation of the act, secondly, blameworthiness, and, thirdly, what was just and equitable. Taking into account all the circumstances, there would be judgment for the plaintiff for one-half of the assessed damages. Judgment for the plaintiff.

APPEARANCES: *J. S. Watson*, Q.C., and *G. Bean* (*Canter, Levin & Mannheim*, Liverpool); *H. I. Nelson*, Q.C., and *J. M. Davies* (*Weightman, Pedder & Co.*, Liverpool); *G. Clover* (*J. W. Ridsdale*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 551

SUNDAY OBSERVANCE: MOTOR CYCLE SCRAMBLE IN PUBLIC PARK: "PLACE"

Culley and Others *v.* Harrison

Lord Goddard, C.J., Cassels and Donovan, JJ. 25th April, 1956

Case stated by Leyland justices.

Informations were preferred against a number of defendants, including the secretary, the clerk of the course and two stewards who took part in managing or conducting a motor cycle scramble, charging them with, on 7th August, 1955, using a certain place, namely, Cuerdon Park, for public entertainment, to wit, a motor-cycle scramble, to which persons were admitted by the payment of money, such day being the Lord's Day, called Sunday, whereby the said place was deemed to be a disorderly place, contrary to s. 1 of the Sunday Observance Act, 1780, and s. 1 (3) of the Common Informers Act, 1951. The justices found, *inter alia*, that on Sunday, 7th August, 1955, a motor cycle scramble was held at Cuerdon Park, which was a public entertainment to which the public were admitted by the payment of money or by tickets sold for money. Cuerdon Park, admittedly a defined and definite area, was a very extensive park consisting of many acres; the course on which the competitors rode was divided off by a wire and rope barrier and admittance to the land adjoining the course was gained by the public by the purchase of tickets at seven spaces in the barrier. Section 1 of the Sunday Observance Act, 1780, provides that any house, room or other place which shall be opened or used for public entertainment or amusement upon any part of the Lord's Day, called Sunday, and to which persons shall be admitted by the payment of money or by tickets sold for money, shall be deemed a disorderly house or place. It was contended for the defendants that, in its context in the Act, "place" must connote some form of structure and could not include an open park. The justices convicted each of the defendants, and the defendants appealed.

LORD GODDARD, C.J., said that it was contended that "place" in s. 1 must be construed *ejusdem generis* with the words "any house, room" that went before. He (his lordship) did not think that the words "house, room" could be said to establish a genus; he thought that Parliament was saying that the entertainment must not be held, indoors or out. There could be a disorderly place as well as a disorderly house; a disorderly house would indicate four walls and a roof, and a disorderly place could mean an enclosure set aside for public entertainment. If the court were to say that what had been done in the present case was not an offence it would follow that every racecourse in the country—every course for horse racing, dog racing or motor racing—providing that it closed its buildings, could open on Sunday. He did not think that it was intended by the Act that such meetings should take place on Sunday. The meaning to be given to "place" in the section was wider than house or room. He would dismiss the appeal.

CASSELS and DONOVAN, JJ., agreed. Appeal dismissed.

APPEARANCES: *Norman Skelhorn*, Q.C., and *B. H. Gerrard* (*A. J. A. Hanhart*, for *A. S. Coupe, Lowe & Co.*, Rochdale); *Richard Elwes*, Q.C., and *John Hobson* (*Vizard, Oldham, Crowder and Cash*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [3 W.L.R. 21

Probate, Divorce and Admiralty Division

PROBATE GRANTED BY FOREIGN COURT OF DOMICILE: ENGLISH COURT FOLLOWS COURT OF DOMICILE

In the Estate of Yahuda, deceased

Karminski, J. 18th April, 1956

Probate motion.

The testatrix died domiciled in the State of Connecticut on 6th March, 1955. By two wills, both dated 12th November, 1953, she disposed of personalty in the United Kingdom and property in Israel respectively. By a third will dated 19th November, 1953, the testatrix disposed of her property in the Union of South Africa, and a fourth will of the same date related to her property in the United States of America. On 30th July, 1954, she executed a codicil to the fourth will, the contents of which are irrelevant for the purpose of this report. As the two wills of 19th November, 1953, contained revocation clauses they appeared to revoke those executed on 12th November, 1953; but on 21st March, 1955, the probate court for the district of New Haven in the State of Connecticut admitted all four wills and the codicil to probate. The executors of the will of 12th November, 1953, which disposed of property in the United Kingdom, applied by motion for a grant of probate of that will.

KARMINSKI, J., said that he must make the order asked for on the case on motion, because the court of the domicile, namely, the court of the State of Connecticut, had already granted probate of all four wills made by the deceased, although those made on 19th November, 1953, would appear to revoke those executed on 12th November, 1953. The law was accurately stated in Mortimer on Probate (2nd ed., pp. 477–478) where it was said that when a will had been recognised by a court which had a complete jurisdiction in the country in which the testator was domiciled at the time of the death, it was the established practice of the English court to admit to probate in this country a duly authenticated copy of such will, without further evidence of its validity, as it was presumed that the foreign court had been satisfied on that point. The inconveniences of re-examining the validity of testamentary documents which had been pronounced valid by the court of the domicile appeared to be obvious and had often been commented on by the court. Order accordingly.

APPEARANCES: *C. A. Marshall-Reynolds* (*R. K. M. Kenber*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [3 W.L.R. 2

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

Progress of Bills

Read Second Time :—

British Transport Commission (No. 2) Bill [H.C.] [10th May.
Croydon Corporation Bill [H.C.] [8th May.
Local Government (Street Works) (Scotland) Bill [H.C.] [10th May.
Roxburgh County Council (Ale Water) Order Confirmation Bill [H.C.] [9th May.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Roxburgh County Council (Ale Water).

Read Third Time :—

Agricultural Mortgage Corporation Bill [H.C.] [10th May.
Liverpool Overhead Railway Bill [H.L.] [8th May.
Pensions (Increase) Bill [H.C.] [8th May.

In Committee :—

Small Lotteries and Gaming Bill [H.C.] [10th May.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Family Allowances and National Insurance Bill [H.C.] [7th May.

To increase the rate of certain allowances under the Family Allowances Acts, 1945 and 1952; to extend the definition of a child for the purposes of those Acts, the National Insurance (Industrial Injuries) Acts, 1946 to 1954, and the National Insurance Acts, 1946 to 1955; to amend the provisions of the said Acts of 1946 to 1954 and 1946 to 1955 with respect to benefits payable to widows; to validate certain marriages for the purposes of the Acts aforesaid; to make provision with respect to reciprocal arrangements with other countries in connection with family allowances; to authorise a local authority to whose care a person has been committed by an order of any court under the Children and Young Persons Act, 1933, or the Children and Young Persons (Scotland) Act, 1937, to entrust the care and control of that person to a parent, guardian, relative or friend; to permit such a person to be treated as included in a family for the purposes of family allowances while the control of that person is so entrusted; and for purposes connected with the matters aforesaid.

Workmen's Compensation and Benefit (Supplementation) Bill [H.C.] [8th May.

To provide for the payment of allowances out of the Industrial Injuries Fund with a view to supplementing workmen's compensation and benefit, and for purposes connected therewith.

Read Second Time :—

Coal Industry Bill [H.C.] [10th May.
Finance (No. 2) Bill [H.C.] [9th May.

Read Third Time :—

Hotel Proprietors (Liabilities and Rights) Bill [H.C.] [11th May.
Licensing (Airports) Bill [H.L.] [7th May.
Local Government Elections Bill [H.C.] [10th May.
National Insurance Bill [H.C.] [11th May.
Sion College Bill [H.C.] [10th May.
Solicitors (Amendment) Bill [H.L.] [11th May.

In Committee :—

Restrictive Trade Practices Bill [H.C.] [8th May.

B. Questions

Brothels, London

Mr. Deedes stated that the Metropolitan Police were instructed that it was their duty to keep watch on suspected brothels. If evidence that the law was being broken was obtained, then a report was sent to the local authority for them to consider prosecution. If the local authority did not do so, then it was the duty of the police to prosecute where there was sufficient evidence. [10th May.

STATUTORY INSTRUMENTS

Baking Wages Council (Scotland) Wages Regulation (Amendment) Order, 1956. (S.I. 1956 No. 672.) 6d.

Boot and Shoe Repairing Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1956. (S.I. 1956 No. 662.) 6d.

Certificates of Arrest and Surrender of Deserters and Absentees (Army) Regulations, 1956. (S.I. 1956 No. 657.) 5d.

London Traffic (Prescribed Routes) (Westminster) Regulations, 1956. (S.I. 1956 No. 656.)

Owner's Risk Standard Charges Modification Order, 1956. (S.I. 1956 No. 677.)

Prison (Scotland) Rules, 1956. (S.I. 1956 No. 671 (S. 32).) 5d.

Retention of a Main under a Highway (Worcestershire) (No. 1) Order, 1956. (S.I. 1956 No. 655.)

Retention of a Pipe under a Highway (Pembrokeshire) (No. 1) Order, 1956. (S.I. 1956 No. 670.)

Scottish Milk Marketing Scheme Amendments (Approval) Order, 1956. (S.I. 1956 No. 650 (S. 31).) 11d.

Stopping up of Highways (Staffordshire) (No. 1) Order, 1956. (S.I. 1956 No. 654.)

Stopping up of Highways (Staffordshire) (No. 3) Order, 1956. (S.I. 1956 No. 652.)

Stopping up of Highways (Worcestershire) (No. 7) Order, 1956. (S.I. 1956 No. 653.)

Stopping up of Highways (Worcestershire) (No. 8) Order, 1956. (S.I. 1956 No 669.)

Wages Regulation (Licensed Non-residential Establishment) Order, 1956. (S.I. 1956 No. 658.) 8d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

Mr. Arthur Davies, solicitor, of Llanidloes, has resigned his position as County Court Registrar, which he has held for fifty-one years.

Mr. Anthony Hastings Pickles, solicitor, of Rotherham, was married recently to Miss Judyth Simmonds, of Newbold Moor.

Mr. John Ambler, solicitor, of Preston, left £55,894 (£55,046 net).

Mr. Raywood William Baddiley, solicitor, of Doncaster, left £25,201 (£21,131 net).

Mr. C. A. Cohen, solicitor, of Westminster, left £292,429 net.

Mr. Charles Albert Edward Eley, solicitor, of Birmingham, left £28,587 (£26,336 net).

Mr. Archie Wilkin Harries, solicitor, of Aberystwyth, left £62,393 net.

Mr. Geoffrey William Russell, retired solicitor, of Church Row, N.W.3, left £27,934 (£27,646 net).

NOTES AND NEWS

Honours and Appointments

Mr. J. C. CHAMBERS, assistant to the chief solicitor and legal adviser, British Transport Commission, has been appointed secretary of the Central Transport Consultative Committee in succession to Mr. G. Cole Deacon, C.B.E., who will be retiring at the end of July.

Mr. RONALD E. SMITH, of Wallasey, has been appointed assistant solicitor in the Town Clerk's Department, Wolverhampton, in succession to Mr. D. J. Grundy.

Miscellaneous

DOUBLE TAXATION

FEDERATION OF RHODESIA AND NYASALAND

An Order in Council relating to the Double Taxation Arrangements with the Federation of Rhodesia and Nyasaland relating to taxes on income was made on 24th April and has now been published as S.I. 1956 No. 619.

ROYAL COMMISSION ON COMMON LAND

Continuing its series of visits to typical common lands in various parts of England and Wales, the Royal Commission has now arranged to meet in Llandrindod Wells, Radnorshire, on 20th and 21st June next. On 20th June, it will probably hold a public sitting for the hearing of oral evidence in the County Hall, Llandrindod Wells. On the following day, it will tour some of the common lands in the neighbourhood. Persons wishing to submit evidence to the Royal Commission are invited in the first instance to send their views in writing to the Secretary of the Royal Commission, 26 Sussex Place, Regent's Park, London, N.W.1. The commission will decide, in the light of written evidence received, which witnesses it wishes to invite to give supplementary oral evidence.

The Royal Commission has issued the following programme:—

Witness	*Date and time of hearing*	*Place*
The National Trust	30th May 12 noon to 1 p.m.	26 Sussex Place, Regent's Park, London, N.W.1.

(The hearing of oral evidence will be followed in the afternoon by a visit to some of the commons on the Trust's estates at Ashridge.)

The Ramblers' Association	31st May 11 a.m. to 1 p.m. 2.30 p.m. to 4 p.m.	26 Sussex Place, Regent's Park, London, N.W.1.
To be announced later	20th June 10.30 a.m. ..	The County Hall, Llandrindod Wells Radnorshire.
	21st June ..	Visit to neighbouring commons.

SOCIETIES

THE LAW SOCIETY

The President of The Law Society, Mr. W. Charles Norton, gave a luncheon party on 14th May at 60 Carey Street, Lincoln's Inn. The guests were: The Swiss Minister, Viscount Kemsley, Sir Hartley Shawcross, Q.C., M.P., Mr. Justice Upjohn, Mr. A. J. Driver, Mr. F. C. Stigant and Mr. T. G. Lund.

LOCAL GOVERNMENT LEGAL SOCIETY

The Mayor and Corporation of Oxford entertained the Local Government Legal Society to luncheon at the Town Hall, Oxford, on 5th May, on the occasion of their annual provincial meeting. The chairman of the society, Mr. R. O. F. Hickman, presided at the morning session at which Sir Carleton Allen, Q.C., D.C.L., J.P., spoke about some of the problems arising out of delegated legislation, particularly those connected with local government. He said that whatever may have been the strict legal position under the emergency legislation of the 1914–1918 period, sub-delegation was clearly *intra vires* under the 1939 Defence Regulations. One of the results was that the "competent authorities" who were empowered to act were able to give directions having the force of law and it had sometimes been very difficult to distinguish between circulars and other communications intended to have legislative effect, and those issued merely for administrative purposes. Moreover it had been almost impossible for the public to see many circulars as they had not been published by the Stationery Office. In his view it was time that some committee or body, perhaps the Statutory Instruments Committee, should differentiate between the two types and rationalise the position.

In the second part of his address, Sir Carleton turned to the problems now confronting Sir Oliver Franks' Committee on Administrative Tribunals and Enquiries. He emphasised that a right of appeal against a decision rested purely on statute, but where no such right existed there was often a remedy by way of one or other of the prerogative orders granted by the High Court. He drew attention to the anomaly whereby a "speaking order" could sometimes be set aside by the courts, when one stating no reasons on its face was immune from interference. He was against the introduction of any form of tribunal founded on the French conseil d'état, but did not shrink from mixing lawyers and laymen in a specially created administrative division of the High Court on the lines of that proposed by the abortive Liberty of the Subject Bill which had been introduced in the last session of Parliament.

SOLICITORS BENEVOLENT ASSOCIATION

At the monthly meeting of the Board of Directors held on 2nd May, it was learned with deep regret of the death of Mr. Ernest Goddard, who had been an honorary auditor of the Association since 1912; an appreciation of his many years of service and generous support to the Association was recorded. Twenty-four solicitors were admitted as members of the Association, bringing the total membership up to 8,040. Twenty-two applications for relief were considered, and grants totalling £2,661 were made, £70 of which was in respect of "special" grants for holidays, clothing, etc.

All solicitors on the Roll for England and Wales are eligible to apply for membership, and application forms and general information leaflets will gladly be supplied on request to the Association's offices, Cliffords Inn, Fleet Street, London, E.C.4. The minimum annual subscription is £1 1s., and a single payment of £10 10s. constitutes life membership of the Association.

THE ROYAL INSTITUTION OF CHARTERED SURVEYORS

ANNUAL GENERAL MEETING

The annual general meeting of the Royal Institution of Chartered Surveyors to receive the report of the Council for the session 1955–56 will be held on Monday, 28th May, 1956, at 5 p.m.

The UNION SOCIETY OF LONDON announces the following debate to be held in the Common Room, Gray's Inn, at 8 p.m. on 30th May: "That this House welcomes the principle of getting something for nothing."

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).